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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

PANTELEIMON SPIRAKIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000887

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

WILLIAM H. RAY
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803)734-4276

ATTORNEYS FOR RESPONDENT

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) Court of General Sessions
County of Horry) 2016-GS-26-04786
2016-GS-26-04788
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2016-GS-26-04791

State of South Carolina)
) Transcript of Record
vs.)
)
Paneleimon Spirakis)

August 20-21, 2018
Conway, South Carolina

BEFORE:

Honorable Larry B. Hyman, Jr., Judge.

APPEARANCES:

Mary Ellen Walter, Esq.
Leigh Andrew, Esq.
Attorneys for the State

Ralph Wilson, Sr., Esq.
Attorney for the Defendant Spirakis

Ralph Wilson, Jr., Esq.
Attorney for the Defendant Ambrose

James C. Galmore, Esq.
Attorney for the Defendant Honeycutt

Teresa J. F. Bautz, RPR
Official Court Reporter

I N D E X

WITNESS	DIR	CROSS	RED	REC
Lindsay Honeycutt				
Ms. Andrew	53	--	61	--
Mr. Wilson	--	56	--	--
SS [redacted]				
Ms. Andrew	62	--	--	--
Mr. Wilson	--	65	--	--
Tonya Root				
Ms. Andrew	67	--	--	--
Mr. Wilson	--	--	--	--
Dianne Nordeen				
Ms. Walter	92	--	--	--
Mr. Wilson	--	102	--	--
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(WHEREUPON, the hearing commenced at approximately 10:55 a.m.)

(WHEREUPON, the jury panel was duly sworn.)

THE COURT: Good morning, good morning. Good to see you, everybody just keep a seat. Good to see you. It's wonderful to see this many people who have volunteered to be on jury duty. I want to know which one of you volunteered. That was the ones I was going to send home.

My name is Larry Hyman. I am a circuit judge here in South Carolina. Like all circuit judges, I am required to travel all over the State and hold court. Actually, this is the first time I've been in Conway, I think, in almost a month. I'm always happy to be here, though, because this is where I grew up, this is where I live, this is my resident circuit. And it's always better to sleep at home in my bed than in a motel. So I'm always happy to be back here.

This week we have general sessions court. Is that all we're going to have, madam clerk; am I the --

THE CLERK: You are the only one doing a jury, yes, sir.

THE COURT: Okay. The circuit courts in South Carolina are a little different from most states. In South Carolina, circuit judges are required to be able

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to try cases, two types of cases; first, criminal cases, we call that General Sessions court, or civil cases, and we call that Common Pleas court.

A civil case is where you have a dispute between people or companies, and that can be anything from a simple car wreck to a contract dispute or some sort of injury. That type of case is called Common Pleas.

This week we only have General Sessions which is criminal court, and I'll be presiding over the criminal court. That's really unusual for Horry County. Horry County usually will have anywhere from three to five Circuit Court judges every week. I'm sure we've got some more judges here this week, I just haven't checked on it. But they will not be requiring a jury.

A lot of the things that we do in the Court's don't require a jury. We try to be very careful about bringing you in. We don't want to bring in a jury and waste your time -- I'm sure that's how some of you may look at it -- unless we absolutely have to.

And in that regard, let me tell you this. Most of the cases that are brought either in the criminal court or in the civil court are resolved without the necessity of having a jury. And that's just the way we have to do it. Back when I first started practicing law, I remember I got paid with beaver hides and things

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like that when I started. Wampum was still the currency back then. But back then we'd try a very high number or percentage of the cases would be taken to juries.

Nowadays, we employ all manner of devices to help resolve matters. We have mandatory mediation. We make every attorney file the case to have a mediator and meet and try to work it out. We have arbitrations where the matters are tried without a jury.

The reason we do that is my clerk down here tells me that just in Horry County alone we have about 12,000 civil filings a year. Now, if we cut that number down to 10,000, and if I could try a case every two days and -- which I assure you no judge could do, cases just take longer than that -- but if I could do that and if I never missed a day's work, I never took a vacation, I was never sick, I was here every day trying cases every week, it would only take me 80 years to try what's filed in this county in one year. So we have to use those devices.

But sometimes there are cases that just require the services of the jury. Many of you may look at this as a civic obligation. You may dread getting a summons for jury service. But I would suggest to you that you should look at it as a right. Every one of you, unless

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you are disqualified for some reason, and we'll talk about that in a minute, has the right to make decisions in this state that affect people's lives, decisions that judges can't make, lawyers can't make.

You become Solomon, you become kings and queens for a day. Because what you say on a jury is what will be done. You are the ultimate arbitrators, you will say how disputes will be satisfied. And you have the right to do that by being a citizen of this state.

Now, what I am asked to do this morning first thing is to qualify this jury; that is, to determine which of you may sit statutorily as jurors in the Court of Common Pleas or General Sessions. There are certain statutory qualifications, and there are certain exemptions, and there are certain disqualifications. And we're going to talk about those this morning.

This is what we call a court of record, which means that everything said to a jury by the Court has to be taken down. You notice this lady here to my left, Ms. Bautz, she is taking down this conversation that I'm having with you this morning.

Whenever a juror is excused, whenever a juror is disqualified, whenever a juror has not met the statutory qualifications, that has to be recorded, there has to be a record kept of that. And our clerk

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has to keep a record of that.

So what I have found to be helpful is to divide the qualification process up in sort of three sections. The first thing I'm going to do is I'm going to ask you some questions about the general qualifications of a juror. For example, one of those would be, are you a citizen of the United States. There are several others. But it will be questions like that. I will not ask you to respond when I ask you those questions. Wait till I get through those questions. There are not that many of them, you can remember, I'm sure.

But once I get through with those questions, if one were to apply to you, I would ask you then just to come right up here. And Mr. Ropp, who's around the corner here -- where is Mr. Ropp? He's like herding cats, I cannot keep up with him. I went to high school with him, you see, and nobody else would have him. And I hired him, and I can't get rid of him now. But he is my bailiff. You will get to know Mr. Ropp before the week is over.

But he will come -- he does a good job -- he'll be right down here. And you'll meet with him and he'll bring you up one at a time, and we'll talk about it. The reason we do that is there are a couple of questions that could cause you some embarrassment if

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you had to stand up and talk about it in front of everybody, and I don't want to do that. So we'll come up and keep it as private as possible.

Once we've gone through that, we will talk about what is called exemptions. There are some exemptions for jury service. I personally do not have the authority to excuse anybody's service. If you're a qualified juror, I can't just say, you don't have to serve. But you may have an exemption that applies to you.

Let me give you an example. If you are 65 years of age or older, you don't have to serve as a juror. All you have to do is say, I'm 65. Now, that is an exemption, it means it is private to you. You can claim it or not claim it. You don't even have to tell us. There are several things like that if you don't want to claim it.

We have found that our senior citizens make great jurors. They bring a wealth of life experience and wisdom to the jury pool, and we're glad to have you. But if you're over 65 -- or 65 or older and you don't want to serve, all you have to do is tell us and we will exempt you from service in that regard. And I'm going to talk about that.

Wait until we get to that point. And, again, you

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don't have to answer when I'm going through the questions. But once I've gone through them, again, come up and stand with Mr. Ropp, and he'll bring you up one at a time and we'll talk about it.

Finally, as I said, I can't excuse your jury service. But we acknowledge that, you know, sometimes we bring you here and you have very important things that needed to be done this week. It's just the worst week we could have possibly called you. Your daughter is getting married, you got those grand kids out there in the mini-van trying to get down to Disney World last week before school starts, yeah, there are things like that that happen.

If that's the case, and this is a severe hardship for you, I cannot excuse you, but I can transfer you and we'll bring you back some other week for service. We're going to get to that in the third phase.

It will be so helpful if y'all will keep in mind that we're going to get to all of those things. I promise you we'll get to all of them. If you'll keep the little categories in place, keep that in mind and only come up in response to the questions I put to you, it will really help the clerk's office. Because they got to put down why were you disqualified, why you were excused and -- or why you were transferred. And that's

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very important, it will be very helpful to us if you could do that.

Now, with that said, let's get right into it. Listen very carefully. These are the qualification -- general qualification questions.

Are they under oath?

THE CLERK: They are.

THE COURT: Well, that's good. You know, I'll tell you how important a juror is. I have tried death penalty cases. And there can be a witness upon which a person's life will depend, the swing witness in a death penalty case. That witness takes an oath one time to tell the truth. If you get on a jury, you will have taken it three times before you ever sit. I think that tells us how important it is that we have jurors that will be fair and impartial in a case.

But listen very carefully to these questions. Is there any member of the jury panel who is not a citizen of the United States?

You know, we didn't used to ask that question because we got the jury pool from the voter list. And if you were on the voter's list, you were a citizen. Some of our politicians up in Columbia found out that some people weren't registering to vote because they might be on jury duty. Well, they fixed that.

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Now, if you have a South Carolina driver's license or if you have a South Carolina identification card, or if you're on the -- you're a registered voter, you're subject to be called. So sometimes we get people who have gone down and gotten their driver's license who are not citizens, and you may end up on a jury pool. And that's why we have to ask that question now.

Also, you must be a resident of Horry County. Your little summons says Fifteenth Judicial Circuit. Our state's divided up into circuits. The Fifteenth Circuit is Horry and Georgetown. And while you're summonsed to the Fifteenth, to sit in Horry you have to live in Horry, to sit in Georgetown you have to live in Georgetown County.

Is there any member of the jury panel who is unable to read, write, speak or understand the English language?

I'm reading it just like they wrote it. If you can't speak English, I don't know how you knew what I just said. But if somebody is sitting by you and it doesn't look like they knew what I said, raise your hand and maybe we can help them out with that.

You must have a sixth grade education or its equivalent. Way back when I first started practicing law, we would occasionally run into that. It's very

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rare now. But you'll notice it says, sixth grade education or its equivalent. Let me share my thoughts on that. If you can function in today's society, you pay your taxes and you can keep up with your checking account and all of the things -- if you can work that smartphone better than your five year old can, you have the equivalent of a sixth grade education. But if you have any doubts about it, let me know, we'll come up and talk about it.

Is there any member of this jury panel who, because of a mental or physical infirmity, feels that you are unable to render efficient jury service?

Now, let me tell you a little bit about what might be expected of you. You know, as I travel around the State, some of the counties have very old courthouses, and the facilities available for jurors are pitiful. You're stuck in a closet, old dusty closet, and you're expected to deliberate an important matter. And they need to do better.

But in Horry County, some years, it's almost 20 years now, I guess about 17, 18 years ago, Horry County Council built this courthouse. And one of the things they did was make sure that jurors are taken care of. If you're on a jury, we have jury rooms upstairs that are very comfortable, have a great view out at the

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marina and the tennis courts. I will tell you that if you are in my courtroom, I try not to make you sit more than an hour and 15 minutes, an hour and a half at the most. If you can make it through preaching, you can make it through a morning of my court.

If at any time you become uncomfortable -- that's the last thing I want, I want you to be able to pay attention -- but if you become uncomfortable, all you got to do is raise your hand. That's a signal to me that you want to take a break. And I assure you that we will take a break for you. Our clerk always has refreshments in the jury room for you, coffee, soft drinks, anything you would want.

And Mr. Ropp or one of the sheriff's deputies will always be right at the door. If you have any problems, just open the door, wake up Mr. Ropp and tell him what you need. And he will take care of you. So it's not going to be physically taxing. But if you have a problem, let us know about it.

If you have been convicted, either by plea or trial, of a criminal offense for which -- listen now -- you could have received a sentence greater than one year, that would be a disqualifying event. You know, every time I qualify a juror, we have people come up that had something before a magistrate or a city judge.

Let me tell you this. Their jurisdiction is such that if you had a case that was before the magistrate or a municipal judge, it's not disqualifying. So don't be concerned about that particular offense. But if you've pled guilty or been convicted of an offense in this state or in another state or before the federal courts, that would be disqualifying.

If you are a -- work for the clerk of court, you work in this courthouse, you are a commissioned law enforcement officer, a probate judge, county council, things of that nature, that would be disqualifying. So you need to let us know.

If you have served in this court, Court of Common Pleas or General Sessions in this county in the last year, that would be disqualifying as well.

Now, some of you may be trying to think of when you served or where you served. To be disqualified you would have been brought to this exact room. This is where you would have been required to appear if you were summonsed for General Sessions or Common Pleas court. If you don't know when it was, these ladies with the clerk's office have a record. They will bring it up for you. And we'll check it for you and find out whether you're disqualified.

If you served on the grand jury in Horry County in

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the last three years, that would be disqualifying. Some of you may not be familiar with the grand jury. The grand jury is not a jury that actually hears a case, that's what we call the petty jury. The grand jury is a jury of 18 people that they have to meet every month and they're on it for at least a year. And it considers whether or not indictments should be issued.

If you were on the grand jury, you would know it. But if you were on the grand jury in the last three years, that would be a disqualification.

Now, if any of these disqualifications that I just talked about apply to you, I want you to come forward. Now, we're going to talk about other matters, we're going to talk about hardships, we're going to talk about exemptions in just a moment. But let's just focus on disqualifications now. And if you have any that apply to you, come right up here where Mr. Ropp is and we'll discuss it; okay?

All right. Mr. Ropp?

THE BAILIFF: Number 204.

THE COURT: All right, 204. Yes, sir.

JUROR #204: 39 years ago I had a failed to stop for blue light violation in Georgetown County. I was convicted of that.

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THE COURT: That doesn't carry over a year; does it?

MS. WALTER: I don't think so.

JUROR #204: No. I got probation and a fine.

THE COURT: Okay. It doesn't carry that. You're good, you stay with us, okay.

JUROR #204: Okay, okay.

THE CLERK: Number 204 stays.

THE COURT: I think it carries a year, up to a year.

THE BAILIFF: Number 15.

THE COURT: Yes, sir.

JUROR #15: (Indicating.)

THE COURT: Okay. Mr. Bateman. Let me see, I think I have you. Which one is Mr. Bateman? What number is Mr. Bateman?

THE CLERK: 15.

THE COURT: 15. What were you charged with, Mr. Bateman?

JUROR #15: DUI, a bunch -- a lot of -- a lot of things.

THE COURT: Do you have him?

MS. WALTER: This is all we have.

THE COURT: Did you have -- did you serve any time?

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JUROR #15: I went to J. Reuben for a week, and then they transferred me to Kirkland.

THE COURT: Okay. How long were you at Kirkland, what was your sentence; do you know?

JUROR #15: Three, four months. I'm guessing.

THE COURT: What were you charged with? You had a DUI; what else?

JUROR #15: DUI, not having the breathalyzer in my car, hit a parked car, left the scene.

THE COURT: Okay. I'm going to excuse you because -- are you still in that?

JUROR #15: Huh?

THE COURT: Are you on work release or something?

JUROR #15: No, sir.

THE COURT: Okay. All right. I'm going to excuse you. Thank you.

JUROR #15: Thank you, sir.

THE CLERK: Number 15 is excused.

JUROR #15: Go back to my chair?

THE COURT: No, you can leave.

THE CLERK: You can leave.

JUROR #15: Okay. Thank you, Renee.

THE CLERK: Yes, sir. Have a good day.

THE BAILIFF: Number 24.

THE CLERK: Number 24.

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JUROR #24: I served on a jury last year, September of 2017.

THE COURT: Okay. Let them check for you right there; okay? Give them your name, and they'll bring you up; all right?

THE CLERK: All right. We'll check, we'll tell you in just a second.

THE COURT: Just sit right up here in the front somewhere; okay?

THE BAILIFF: Number 29.

THE COURT: Yes, ma'am.

JUROR #29: I have anxiety really bad.

THE COURT: Okay.

JUROR #29: And it's touch and go, I don't know from one day to the next.

THE COURT: Okay. Are you under a doctor's care?

JUROR #29: Yes.

THE COURT: And do you take medication for it?

JUROR #29: (Nodding.)

THE COURT: Okay.

JUROR #29: Doesn't always work. But I try.

THE COURT: Okay. Well, what I'm going to do is I'm going to excuse you. Thank you.

JUROR #29: Thank you so much.

THE CLERK: Thank you, ma'am. Number 29 is

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excused.

THE BAILIFF: 389.

THE COURT: Yes, sir.

JUROR #389: Back in 2016 I had an attempted murder.

THE COURT: What were you convicted of?

JUROR #389: Attempted murder and distribution of crack cocaine.

THE COURT: Okay.

MS. WALTER: What about distribution, he's saying distribution?

THE COURT: Do you remember?

MS. WALTER: The attempted murder we had was nulle prossed, but I'll check, we'll check for the distribution.

JUROR #389: It's in Georgetown County.

THE COURT: Okay, what -- how much?

JUROR #389: How long it was?

THE COURT: What was your sentence?

JUROR #389: Oh. Zero to -- in Georgetown it was zero to three years, and Horry County it was zero to ten.

THE COURT: Okay. You had one in both; right?

JUROR #389: Yeah, I got charged in Georgetown County.

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MS. WALTER: It could have been too recent, it's not on here.

THE COURT: He said it was a long time.

JUROR #389: Because I just been to court two --

THE COURT: Oh, was just recently?

JUROR #389: Yeah. I been in here two months ago.

MS. WALTER: The nolle pros was July 25th. We're just checking on the distribution of crack.

MS. ANDREW: I don't even see an arrest record.

THE COURT: Okay. I'm going to excuse him; okay? Thank you, sir. You may leave.

THE CLERK: Number 389 excused.

THE BAILIFF: 353.

THE COURT: Yes, sir.

JUROR #353: You were actually my judge. I had some more --

THE COURT: I'm sorry?

JUROR #353: You were my judge last week. I had plead to assault and battery second degree.

THE COURT: Assault and battery second. That's a three-year offense, Mary-Ellen?

MS. WALTER: Yeah. I think he's on there.

THE COURT: And your number is?

THE CLERK: 353.

THE COURT: Okay. Thank you, sir, you're excused.

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THE CLERK: Number 353 is excused.
THE BAILIFF: Number 258.
(Discussion off the record.)
THE COURT: 258, all right. And you've had a criminal conviction?
JUROR #258: Yes. I had a felony possession and unlawful carrying.
THE COURT: You're excused.
JUROR #258: All right, yes, sir.
THE CLERK: Number 258 is excused.
THE BAILIFF: Number 127.
THE COURT: Yes, ma'am.
JUROR #127: Yes. I'm a student at Miller College, and this would be a bad week for me.
THE COURT: We're going to talk about hardships in a minute. We'll be right with you; okay?
JUROR #127: Okay.
THE BAILIFF: Number 384.
(Discussion off the record.)
THE COURT: Yes, sir.
JUROR #384: I work at Horry County Public Works, I'm a heavy equipment operator.
THE COURT: That's not an exemption. Just have a seat with us; okay? Thank you, sir. That's not a disqualification.

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THE BAILIFF: Number 235.
THE COURT: Yes, ma'am.
JUROR #235: Hello. I just feel this is worth mentioning. It's not usually a problem, but I have a medical condition with my bladder. And I generally have to drink like a lot of water, and I sometimes need to use the restroom up to two hours.
THE COURT: All you got to do is just raise your hand if you need to use --
JUROR #235: Okay.
THE COURT: We'll take care of --
JUROR #235: I know you said that. But I just wanted to -- if it became a problem, I wanted you to know now and not be surprised later.
THE COURT: All right. You will not surprise me.
JUROR #235: I will be fine, but I had to mention it.
THE COURT: You will be fine.
JUROR #235: Okay.
THE COURT: You will be fine. Thank you, ma'am.
JUROR #235: Thank you.
THE CLERK: Number 235 stays.
THE BAILIFF: Number 317.
THE COURT: Yes, ma'am.
JUROR #317: I was convicted of shoplifting when I

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was -- well, the incident occurred when --

THE COURT: First offense?

JUROR #317: Yes, sir.

THE COURT: Okay, that's not disqualified.

JUROR #317: Okay. I just wanted to make sure.

THE COURT: Okay, all right.

JUROR #317: Thank you.

THE CLERK: Number 317 stays.

THE BAILIFF: Number 302.

THE COURT: Yes, sir.

JUROR #302: I have a hard time reading and comprehension. I had a IEP all the way through high school.

THE COURT: Okay.

JUROR #302: They said my reading level is like at third grade.

THE COURT: Okay. And you think that it --

JUROR #302: And I also have three small children at home.

THE COURT: Okay, I understand that. But you think that you would have difficulty understanding some of the things that's going on?

JUROR #302: Yes.

THE COURT: And your name?

JUROR #302: Christopher Sellers.

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THE COURT: Sellers. Okay, I'm going to excuse you then; okay?

JUROR #302: Thank you, sir.

THE COURT: Thank you.

THE CLERK: Number 302 excused.

THE COURT: Okay. All right. Now, let's talk about exemptions. We're going to get to hardships in just a minute. But listen very carefully as I go over the exemptions for you. And again, you don't have to claim an exemption if you have one.

(Discussion off the record.)

THE COURT: Ms. Bell, you served last September. You're just under the wire, you made it. You're excused. Thank you.

All right. Is there any member -- and I was telling you, you do not have to claim your exemption. It's private, you can claim it or you can decide that you want to stay and serve, and we're happy to have you, even though an exemption might apply to you. But if you are 65 years of age or older, as I told you a moment ago, you may claim that as an exemption.

The next two exemptions sound like disqualifications that we discussed a moment ago. You remember I told you that if you served in this court in the last year, that would be a disqualification. If

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you have served in the last three years, though, again, you came to this court, if you served in the last three years, you may claim that as an exemption.

The same thing applies to service on the grand jury. If you served in the last three years, you're disqualified. If you served in the last five years, you may claim that as a exemption. And, again, the clerk would have the records if you have any question about how long ago your service was.

The next exemption deals with those of you who have small children. It's a multi-part exemption. It is designed for the stay-at-home mom or dad. So listen very carefully. First of all, you must have children under the age of seven, okay. That child must be your child or a child that you have legal custody of. And you must care for that child on a daily basis. You can't work outside the home and claim an exemption. Your job must be such that you're responsible for the daily care of that child.

And, you know, I thought that several years ago I had seen the record, there was a lady in Spartanburg who had four. A couple months ago I asked that question, had a lady here in Horry County with six under the age of seven. I volunteered to put her in jail for about 30 days just to give that poor soul a

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break. Because I can promise you she needed it. Bless her heart. But sometimes life deals those sorts of cards to us.

But if you have a small child under the age of seven, and you take care of that child and it's your child, you may claim that as an exemption.

If you are attending school, if you are a full-time -- not online. We're talking about interrupting your classroom schedule. If you are a student, and you're going out to Tech, you're going to Coastal or anyplace else, if you're a full-time student, we don't want to interfere in your classroom schedule.

Or if you work at a school and you provide services there and there is no one to replace you, I can transfer you to a time where we won't interfere with your classroom attendance or your work at school.

If you are employed with the Department of Corrections at a penitentiary, you may claim that as an exemption.

Listen very carefully to this one. If you provide such services to a business that the business must close if you are absent, you may claim that as an exemption. Now, this exemption is for that mom-and-pop business operator, the guy who does the payroll, he

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does the scheduling, he answers the phone. And if he's not there, all of his employees have got to go home.

It doesn't mean if you work on commission, you sell real estate or you're a hairdresser or whatever, the doors don't close, in that case, if you are required to serve. But if that's the case, you may claim that as an exemption.

Finally, if you are the primary caretaker, it's sort of like the one with small children, if you take care of a disabled person or an elderly person that cannot be left at home, you take care of them on a daily basis, that's what you do, you may claim that as an exemption.

Now, if any exemption applies to you, please come right up here with Mr. Ropp. Now, we're going to get to other hardships in just a minute.

THE BAILIFF: 245.

THE COURT: Yes, sir.

JUROR #245: Sole proprietor business. If I'm not there --

THE COURT: What kind of business?

JUROR #245: A motorcycle shop.

THE COURT: Where's your shop?

JUROR #245: In Murrells Inlet.

THE COURT: What's your franchise?

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JUROR #245: Paints By Rusty.
THE COURT: Okay. And you're the boss and the only one?
JUROR #245: The only one.
THE COURT: Okay.
JUROR #245: And a single father with a kid in college.
THE COURT: Okay. I will excuse you, then; okay?
JUROR #245: Thank you, sir.
THE COURT: Number 245 is excused.
THE BAILIFF: Number 360.
THE COURT: Yes, ma'am.
JUROR #360: I have a one year old and a three year old.
THE COURT: Well, bless your heart.
JUROR #360: I know.
THE COURT: And you stay at home with them?
JUROR #360: I do. I did say I do teach classes, but that's kind of on the side.
THE COURT: Okay.
JUROR #360: And they go with me. I can't get away from them.
THE COURT: All right, good. All right, I'm going to excuse you. Thank you, ma'am.
JUROR #360: Thank y'all. Thank you so much for

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letting me come up here.

THE CLERK: Number 360 is excused.

THE COURT: Small children.

THE BAILIFF: Number 71.

THE COURT: Yes, sir.

JUROR #71: I think I served in the last three years.

THE COURT: Okay.

THE CLERK: Number 71, will you check when he served.

THE COURT: Sit right over here, they will check; okay?

THE BAILIFF: 58.

THE COURT: Yes, ma'am.

JUROR #58: I actually have a one-and-a-half-week-old baby.

THE COURT: Good for you, good for you. That's your first one?

JUROR #58: Yes.

THE COURT: Good for you.

THE CLERK: Congratulations.

THE COURT: What you have, a little boy or little girl?

JUROR #58: Little boy.

THE COURT: Okay. Is he a handful already?

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JUROR #58: Yeah.
THE COURT: Okay.
JUROR #58: Up every hour.
THE COURT: All right. We'll excuse you. Thank you.
JUROR #58: Thank you.
THE COURT: Number 58 excused.
THE BAILIFF: Number 197.
THE COURT: Yes, sir?
JUROR #197: I served last year.
THE COURT: Okay.
JUROR #197: But I don't want to -- I'm happy to serve again.
THE COURT: Well, good for you.
JUROR #197: But I am not sure of the time, so I don't want to be disqualified.
THE COURT: Okay.
JUROR #197: It was roughly the same time period, though.
THE COURT: Okay.
THE CLERK: Will you check jury qualification on 197.
THE COURT: We'll check it for you. Just have your seat, and we'll tell you if there's a problem; okay?

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JUROR #197: Okay. Thank you.

THE COURT: All right. All right. Now, is there anyone who would like to talk with me about this week being a particular hardship and getting transferred? Just come forward, come forward.

THE BAILIFF: Number 323.

THE COURT: Yes, sir.

JUROR #323: I can't be present on Thursday. My wife will have a colonoscopy, and I am the only one who can drive.

THE COURT: You're going to do what now on Thursday?

MS. WALTER: His wife has a colonoscopy.

JUROR #323: Colonoscopy, my wife.

THE COURT: Okay.

JUROR #323: So --

THE COURT: So you have a medical procedure scheduled, okay. Why don't I carry you over to sometime next month; okay?

JUROR #323: Yeah.

THE COURT: You'll get another notice.

JUROR #323: Thank you.

THE CLERK: Thank you, sir. Number 323 transfer.

THE BAILIFF: Number 127.

THE COURT: Yes, ma'am. What was your problem?

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JUROR #127: Yes. I am 65 and older, but I am in school and I need to be there.

THE COURT: Okay, all right. I'll excuse you. And you're over 65?

JUROR #127: Yes, sir.

THE COURT: Okay. Well, you're excused. Thank you.

JUROR #127: Thank you.

THE CLERK: Number 127 excused.

THE COURT: Over 65.

THE BAILIFF: Number 176.

JUROR #176: I have a problem with Thursday. My daughter is being inducted into nursing school at the Medical University.

THE COURT: Well, good for her, good for her.

JUROR #176: I will be devastated if I missed it.

THE COURT: How old is she?

JUROR #176: She just turned 20.

THE COURT: Okay. Well, good for her.

JUROR #176: She started nursing school there.

THE COURT: Good. That's hard to get into; isn't it?

JUROR #176: Yes. If I can just anyway --

THE COURT: What we'll do is carry you over to sometime in the next 60 days; okay?

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THE CLERK: Okay?
JUROR #176: But I don't mind, I mean, I don't --
THE COURT: We'll give you another notice, that's okay.
JUROR #176: I mean, I don't mind serving this week if...
THE COURT: Well, it's going to be one case, and it's probably going to take all week.
JUROR #176: Okay.
THE COURT: So if you were to get on that case, you would need the Thursday, okay. So the best thing to do is just carry you over; okay?
JUROR #176: Okay.
THE COURT: All right, okay.
JUROR #176: Okay, thank you so much.
THE CLERK: Number 176 transfer.
THE BAILIFF: Number 348.
THE COURT: Yes, sir?
JUROR #348: Good morning. My father passed away three weeks ago today.
THE COURT: Um-hum.
JUROR #348: He's been cremated. The services are in Maryland where we're from this week. And I lost my son three months ago to a fentanyl overdose.
THE COURT: Well, I'm sorry to hear that.

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JUROR #348: And I lost my dog on Friday.
MS. WALTER: Oh, I'm sorry.
THE COURT: I don't want to go home with you.
JUROR #348: There is a black cloud over my house that I got to get rid of. I need 2018 to go away.
THE COURT: Okay. Tell you what, we'll bring you back say in October.
JUROR #348: That's fine, yes, sir.
THE COURT: Okay. Okay?
JUROR #348: Thank you so much.
THE COURT: All right.
THE CLERK: Number 348, transfer to October.
THE BAILIFF: Number 46.
THE COURT: Yes, sir.
JUROR #46: Right now I'm working on the rough-in at the new bowling alley that's being built on the plumbing. And I'm the only person for my company that does any plumbing whatsoever.
THE COURT: Okay. Why don't I continue you over for 60 days.
JUROR #46: Sounds good.
THE COURT: Couple months; okay?
JUROR #46: Wonderful.
THE COURT: All right, thank you.
JUROR #46: Thank you.

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THE CLERK: Number 46, transfer October.

THE BAILIFF: Number 77.

THE COURT: Yes, sir.

JUROR #77: Hey. I have my kids, we are supposed to be doing our open house today, and we also have all their appointments tomorrow because they are getting ready to start school. And I do real estate and I have clients that are in town this week. I will happily serve if we can do it September or October.

THE COURT: September; okay?

JUROR #77: Thank you.

THE COURT: All right, thank you.

THE CLERK: Thank you. Number 77, transfer to September.

THE BAILIFF: Number 88.

THE COURT: Yes, ma'am.

JUROR #88: Hey, judge. So I'm the only -- I'm the only provider that works in my house and pays all the bills. My husband don't work.

THE COURT: I mean, will it help you for me to bring you back some other week?

JUROR #88: Yes.

THE COURT: I mean, I can't excuse you.

JUROR #88: Right.

THE COURT: You know, if you need some time to

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arrange for vacation time or whatever, you know, I'll do what I can.

JUROR #88: That would be fine.

THE COURT: Okay. Bring her back in 60 days.

JUROR #88: Will I get another mailed --

THE COURT: You'll get another notice. You'll get another notice.

JUROR #88: Okay. Thank you.

THE CLERK: So we'll transfer you to October.

THE COURT: October.

JUROR #88: The date?

THE CLERK: We'll send you another notice with the date on it.

JUROR #88: Thank you.

THE CLERK: Um-hum. Number 88, transfer to October.

THE BAILIFF: Number 201.

(Discussion off the record.)

THE COURT: Yes, sir?

JUROR #201: Hi. I want to know if I can be transferred to another week. My wife and I are travelling to Florida --

THE COURT: Okay.

JUROR #201: -- for my grandson's first birthday.

THE COURT: Excellent, okay. How old is he?

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JUROR #201: One.
THE COURT: One, first birthday, okay. Why don't I give you September.
JUROR #201: Can you do October?
THE COURT: October, yes, okay.
JUROR #201: Because September is a crazy month, too.
THE COURT: Bring him back in October. Thank you.
JUROR #201: Appreciate that, thank you.
THE CLERK: 201, transfer October.
THE BAILIFF: 157.
THE COURT: Yes, ma'am?
JUROR #157: I would like to move it to a different day. I work at a resort, and it's like a really busy time, and we only have like four more weeks left of work. So like after that I would be available.
THE COURT: What do you do at the resort?
JUROR #157: Bartend.
THE COURT: Pardon?
JUROR #157: Bartend.
THE COURT: Okay.
JUROR #157: But it's like -- it's not a seasonal job, and it ends in like four weeks, so --
THE COURT: Okay. I'll carry you over to the end of September; okay?

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JUROR #157: Okay.
THE COURT: You'll get another notice; all right?
JUROR #157: Okay, thank you.
THE CLERK: Number 157, transfer September.
THE BAILIFF: Number 12.
THE COURT: Yes, ma'am?
JUROR #12: I have a doctor's appointment scheduled for Friday for a gastrointestinal. It's taken me like over a month to get that appointment.
THE COURT: Okay, I understand that.
JUROR #12: Yeah.
THE COURT: Let's bring her back in October, okay.
JUROR #12: Sorry.
THE COURT: That's all right, that's okay.
THE CLERK: Number 12 transfer October.
THE COURT: I know how hard it is to get those appointments.
JUROR #12: Is that it?
THE COURT: Yeah, thank you.
THE BAILIFF: Number 241.
JUROR #241: Yes. My family will take -- needs to take care of my grandmother, and this is my week.
THE COURT: Okay. I'll bring you back in September; okay?
JUROR #241: Okay.

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THE COURT: All right, thank you.
JUROR #241: Thank you.
THE CLERK: 241, transfer to September.
THE BAILIFF: Number 347.
(Discussion off the record.)
THE COURT: Yes, ma'am?
JUROR #347: Good morning. My daughter, son-in-law and grandsons are arriving today for the week.
THE COURT: Oh, good. You're going to have a houseful; aren't you?
JUROR #347: I am going to have a houseful.
THE COURT: Well, why don't we bring you back September, October?
JUROR #347: October would be great.
THE COURT: Okay, all right. You'll get another notice; all right?
JUROR #347: Thank you.
THE CLERK: Number 347, transfer October.
THE BAILIFF: 362.
THE COURT: Yes, sir.
JUROR #362: Sorry to even ask, but we are moving my stepson into the University of South Carolina on Thursday.
THE COURT: Well, if you'd have said Clemson, I

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would have said no.

JUROR #362: I tried to talk him into Clemson, but -- I wanted him to go to Coastal, but it's -- I'll gladly serve.

THE COURT: Everything starts this week.

JUROR #362: Yes, sir.

THE COURT: Why don't we bring you back in next month sometime.

JUROR #362: That's absolutely perfect.

THE COURT: All right, good, good. Okay. Thank you.

THE CLERK: Number 362, transfer September.

THE COURT: Is he a freshman?

JUROR #362: Yes, sir.

THE COURT: Good for you.

JUROR #362: Thank you.

THE BAILIFF: Number 231.

THE COURT: Yes, ma'am?

JUROR #231: My sister is in, it will be the first time in six years, from Ohio. They got in last night.

THE COURT: I'm sorry? Your sister is coming here to --

JUROR #231: They just came, flied in last night from Ohio.

THE COURT: Okay. So you got to entertain all

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week; right?

JUROR #231: I haven't seen them in six years.

THE COURT: All right. Well, I'm going to carry you over to next month.

JUROR #231: Thank you.

THE COURT: All right, thank you. Mr. Ropp?

THE BAILIFF: Number 28.

THE CLERK: 231, transfer September.

THE COURT: Yes, sir?

JUROR #28: I have a flight that I had booked before I was notified for --

THE COURT: Okay.

JUROR #28: But I had already transferred. And I would like to fulfill this week, but my flight's on Friday.

THE COURT: Okay. I've got one case and it might go that long. So why don't I just carry you over to another week or something. That way you don't have to worry about it; all right?

JUROR #28: I've already been transferred; is that allowed?

THE COURT: We'll have to transfer you again.

JUROR #28: That's fine.

THE CLERK: He's the judge.

THE COURT: They let me do that.

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JUROR #28: All right.
THE COURT: How about October, September?
JUROR #28: September would be good.
THE COURT: End of September sometime?
JUROR #28: Yes.
THE COURT: How about the last of September sometime; okay? Thank you.
JUROR #28: Thank you.
THE COURT: Have a good trip.
THE CLERK: Number 28, transfer last September.
THE COURT: All right.
THE CLERK: Judge, hold on just a second, please.
MS. WILLIAMSON: Number 71 served 9/9/16.
THE COURT: He's good, right, unless he wants to claim it. That was Mr.?
THE CLERK: Danilewicz.
THE COURT: Mr. Danilewicz, you are not -- it's been more than a year but less than three years; do you want to claim your exemption?
JUROR #71: Yes, please.
THE COURT: Okay. You're excused, then. All right, thank you.
THE CLERK: Hold on, we've got one more. 197 is Joseph Latora.
MS. WILLIAMSON: 9/29/17.

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THE CLERK: 9/29/17. He's disqualified.

THE COURT: He's -- yeah. What's his name?

THE CLERK: Latora.

THE COURT: Mr. Latora, you have served in the last year, so you'd be disqualified. We'll put on you the list and bring you back, though; okay?

(Discussion off the record.)

THE COURT: I've been called one time in almost 70 years. Go buy a lottery ticket. Okay. I find that the balance of the jury panel is qualified.

And let me tell you what I'm going to do. I have a case that's scheduled before me that is probably going to be -- take the balance of the week. It's probably the only jury that we're going to need.

However, they tell me that this afternoon I will be doing pretrial motions and taking care of the pretrial matters. And I'm advised that that's going to take all day. So I'm going to ask you to return in the morning at 9 o'clock, we will pick that one jury. And then after that, I would suppose that you're probably going to be excused; right, madam clerk?

THE CLERK: That's correct, sir.

THE COURT: How kind of you. Thank you. And look forward to seeing you in the morning.

THE CLERK: Thank you.

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THE COURT: And if you would, just come back to this room.

(WHEREUPON, a brief recess was taken at approximately 11:41 a.m.)

THE COURT: All right. Thank you, thank you, keep your seats. There's a media request here somewhere. Thank you, Alison. Okay. Sun News, you're good to go. And who's this other one I have? Drew Hansen and -- okay, you're good to go, too. All right.

Now, okay, Mr. Wilson. Ms. Andrew?

MS. ANDREW: Ms. Walter is in the back, Your Honor, she'll be right out.

THE COURT: Do you need her right now?

MS. ANDREW: Well, we have a matter we'd like to address with the Court before we get started.

THE COURT: Okay, all right.

(Discussion off the record.)

THE COURT: Okay. While we're waiting on her, I think the first thing we're going to address is the matter of whether or not we're going to sever?

MS. ANDREW: We can go ahead and put that on the record, Your Honor.

THE COURT: Okay, we've discussed that. And as I understand it, Mr. Wilson, your client -- Mr. Wilson Sr.?

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MR. WILSON SR.: Yes, sir.

THE COURT: Your client is Mr. Spirakis; is that right?

MR. WILSON SR.: That's correct, Your Honor.

THE COURT: And Mr. Wilson Jr., your client is?

MR. WILSON JR.: Ambrose Heavner, Your Honor.

THE COURT: Mr. Heavner, okay. And the initial proposal was to try these two defendants together. We have had a rather extensive pretrial conference regarding this matter. And it has come to my attention, and please correct me if I'm wrong --

MR. WILSON JR.: Yes, Your Honor.

THE COURT: -- Mr. Wilson Jr., you represent Mr. Heavner, but at some time in the past you represented Mr. Spirakis along with Mr. Wilson Sr.; is that correct?

MR. WILSON JR.: Yes, sir. We were in the same firm at the time.

THE COURT: Okay. You and Mr. Wilson Sr. are not in -- you have separate firms now?

MR. WILSON JR.: That's correct, Your Honor.

THE COURT: And it's my understanding that during the time that you were together and represented Mr. Spirakis, that you became privy to certain matters that may or may not be relevant to this particular trial if

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they are tried together but would certainly chill Mr. Spirakis' right to testify. Is that correct, Mr. Wilson Sr.?

MR. WILSON SR.: Yes, sir.

THE COURT: Okay. You -- and it would also create an ethical question for you, Mr. Wilson Jr., in reference to your representation of Mr. Heavner; is that correct?

MR. WILSON JR.: That's correct, Your Honor.

THE COURT: Okay. Is that your understanding as well, Ms. Andrew?

MS. ANDREW: I'm sorry, Your Honor?

THE COURT: That was your understanding of our conversations before?

MS. ANDREW: Yes, Your Honor.

THE COURT: And these facts are not disputed. And I tell you, Mr. Wilson Jr., you have moved to sever?

MR. WILSON JR.: That's correct, Your Honor.

THE COURT: As a result of ethical matters. Mr. Wilson Sr., you've asked to sever because of the chilling effect this may have on your client's right to testify in this matter; is that correct?

MR. WILSON SR.: Yeah. Well, I'm not actually moving to sever. What I am doing is I'm agreeing that severance is the correct --

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THE COURT: Well, essentially you join or you do not oppose that?

MR. WILSON SR.: I absolutely do not oppose that.

THE COURT: You agree with it?

MR. WILSON SR.: Yes, sir, I do.

THE COURT: Okay. All right. And Ms. Andrew, do you want to -- do you feel compelled to put anything on the record in this regard? We've discussed it at length, but I would certainly hear from you if there was anything you want to add to that. I believe you understand the issue here.

MS. ANDREW: I do, Your Honor. The only thing I would add is that the State does have a concern going forward that if Mr. Wilson Jr. has a conflict today as to representing this defendant, that conflict may continue for any trial in the future even after it's severed.

THE COURT: And we're going to discuss that in the future.

MS. ANDREW: Yes, sir.

THE COURT: And I think Mr. Wilson Jr. has advised the Court that he intends to seek some guidance in this regard.

MR. WILSON JR.: Judge, I already contacted Nicole Davis at the South Carolina Bar. And she is going to

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get back to me. She's read the e-mail, we sent her a message, so we're just going to --

THE COURT: All right, very well, okay. What I'm going to do, then, is I'm going to sever these trials. I understand that we'll be going forward with Mr. Spirakis; is that right, Ms. Walter and Ms. --

MS. ANDREW: That's correct, Your Honor.

THE COURT: -- Andrew, is that correct? All right. All right, so that matter is taken care of. Mr. Wilson Jr., you may withdraw.

MR. WILSON JR.: Thank you, Your Honor.

THE COURT: If your client is on bond, he will remain on bond. If he has not made bond, I'm sure he's been -- has he been granted a bond?

MR. WILSON JR.: He's been granted a bond, judge.

THE COURT: Is he out?

MS. WILSON JR.: He's not. He's incarcerated, but --

THE COURT: Okay. Well, those matters will remain as they were; okay?

MR. WILSON JR.: Yes, sir. And at this time, Your Honor, we would also withdraw our motion for a speedy trial.

THE COURT: All right.

MR. WILSON JR.: Withdraw our request.

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THE COURT: And that is -- that motion is withdrawn and with the Court's understanding that you are the person -- that the State was ready to go forward with your client's case. All right, so.

MR. WILSON JR.: I apologize, I used the wrong language, judge.

MS. ANDREW: It's one of each.

MR. WILSON JR.: Yeah. We were asking the Court actually to dismiss that. Because he's already been granted a speedy trial motion.

THE COURT: All right.

MR. WILSON JR.: So he's waiving that.

THE COURT: Okay, all right. Thank you.

MR. WILSON JR.: Yes, sir. Thank you, sir. Thank you, ma'am.

(WHEREUPON, Mr. Wilson Jr. exited the courtroom at approximately 1:19 p.m.)

THE COURT: Okay. Now, we have the afternoon set aside for various motions. I understand that there's quite a bit that we need to do in that regard today.

Ms. Andrew and Mr. Wilson, could you give me some help here. Is there a logical or a more efficient way that we can approach these motions as far as what order they should be addressed in?

I know you both -- I think you both have motions,

but how would you suggest or what order should we follow?

MS. ANDREW: Your Honor, some new information has come to our attention over the break. One of the codefendants, Lindsay Honeycutt, has arrived here today and is present to plead guilty. She encountered the Defendant, Mr. Spirakis, in the lobby, and he made death threats against her and her family. So the State's going to have a motion to revoke his bond immediately. We have a written statement and we have her and her daughter who was present who heard these threats.

THE COURT: Mr. Wilson, is there any question about that having occurred, do I need to put her on the stand? I am very concerned about that.

MR. WILSON SR.: Your Honor, I'm hearing it as you're hearing it.

MS. ANDREW: We just found out, yeah.

MR. WILSON SR.: I have not heard this until this very second.

THE COURT: Well...

MR. WILSON SR.: So if you would give me just two minutes, can we talk.

THE COURT: I think we need to. Why don't we just recess for a few minutes. I want to take this up

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first, okay.

MS. ANDREW: Thank you, Your Honor.

THE COURT: We'll be at ease for a few minutes, okay. Bobby, would you let me know whenever he is...

THE BAILIFF: Yes, sir.

(WHEREUPON, a brief recess was taken at approximately 1:20 p.m.).

THE COURT: Okay, Mr. Wilson, I think you've had an opportunity to discuss this with your client. Now, what's your client's position on this?

MR. WILSON SR.: Your Honor, he denies that he made any threats to this witness. And unfortunately, as best I understand it, there was no one else present when this statement was allegedly made. But I've asked him about it, he denies that he said anything in a threatening manner to her. He said he did pass her in the hallway, and apparently there were some media people present when he was passing her. Whether they overheard or not overheard any conversation --

THE COURT: All right. Well, let's just hear what, all right.

MS. ANDREW: Your Honor --

THE COURT: Ms. Andrew, let's -- you have a witness or someone that can confirm this?

MS. ANDREW: We do, Your Honor. We're going to

call Lindsay Honeycutt to the stand.

THE COURT: All right.

LINDSAY HONEYCUTT, after being duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated.

THE COURT: Ms. Andrew?

DIRECT EXAMINATION

BY MS. ANDREW:

Q Ms. Honeycutt?

A Yes, ma'am.

Q Your case has been called to trial today; is that correct?

A Yes, ma'am.

Q And did you appear here at the Horry County courthouse today for that reason?

A Yes, ma'am.

Q What as your intention when you got here? Was it to plead guilty?

A To plead guilty, yes, ma'am.

Q And to testify against your co-defendant, Mr. Spirakis?

A Yes, ma'am.

Q Okay. When you arrived at the courthouse, where did you go?

A I came up to the third floor in the waiting room.

Q Okay. And at that point did you encounter Mr. Spirakis?
A I did, about five minutes later. He walked up behind my daughter.
Q Okay. And what's your daughter's name?
A SS [redacted].
Q How old is she?
A 15.
Q Okay. What did Mr. Spirakis do when he walked up to you?
A He told me that if he even thought he was going to jail today that he would come kill my whole family tonight.
Q Okay. Did he say anything else?
A That the feds were going to come after me. I don't know what he was talking about.
Q Did anyone else hear him make these statements to you?
A My 15-year-old daughter did.
Q Had he ever threatened you in the past?
A Yes, he has.
Q And can you tell us about that, please.
A It's been numerous times he's threatened me in the past.
Q All right. You have to tell us what he's done to

threaten you in the past.
A Like with everything?
Q Just in the last few weeks.
A In the last few weeks he's been calling my sister and my mom constantly, telling them if I went through with this and told the truth that not only he was going to kill my whole family, that he was going to come kill my mom and dad. He's been going up to my mom's job. I mean, it's -- it's been crazy.
Q Okay. Prior to seeing him today, had you seen him in the last month before today?
A No, I haven't seen him. As soon as he got out of jail, I'm not sure how long ago that was, he rode up to my house on a bike.
Q Okay. And what did he tell you at that time?
A That he wanted to run, he had his passport, wanted to know if I had mine.
Q Okay. Did he say anything about the timing of when he would try to run?
A During the first or second day during trial, he said if it started going bad that he would leave. And he wanted me to come with him.
Q Can you think of anything else he said to you that you need to tell the Court?
A (Shaking head.)

MS. WALTER: You just have to give a verbal response.

MS. HONEYCUTT: Oh, no. I'm sorry.

MS. ANDREW: Okay, thank you. Please answer any questions Mr. Wilson --

THE COURT: Mr. Wilson.

MR. WILSON SR.: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WILSON SR.:

Q Ma'am, when is the last time that you you've seen Mr. Spirakis before today?

A Maybe a month ago. I'm not sure.

Q All right. Have you had any direct communication with him that you initiated since he was released from prison or from jail?

A That I initiated?

Q Yes, ma'am.

A No. No, sir.

Q And you said that he contacted your other members of your family; is that correct?

A Yes, sir.

Q All right. And did you report that to the solicitor's office that he contacted anybody in your family?

A No, I did not.

Q All right. When is the first time that you made any allegation to state that Mr. Spirakis threatened you or other members of your family?
A Just today.
Q Today. And that's because you ran into him in the hallway, as you said; correct?
A He approached me in the waiting room, and my daughter -- he followed my daughter up -- and I'm scared -- I mean, I'm scared for my life.
Q Okay. And has he physically in any way assaulted you in any way whatsoever?
A In the past, yes.
Q Okay. I'm talking about today, since this -- since you decided to plead guilty. Since you decided to turn State's evidence and plead guilty, has he threatened you, has he physically harmed you in any way whatsoever?
A Not physically. But he threatened me to kill my whole family in front of my daughter today.
Q Okay, and I'm coming to that. Now, your daughter was with you, and you say she's 15 years old. Her name is SS [redacted]?
A Yes, sir.
Q Okay. And you and SS [redacted] weren't together in the room?

A She was walking up, and he was walking up behind her.
Q Okay. Just so I'm clear, you were already in the room?
A Yes, sir.
Q Is that what you're saying? And were you seated or were you standing?
A I was seated until I seen him walk up, and then I stood up.
Q Was anyone else in the room with you?
A Two guys in suits were, yes, sir.
Q Okay. Do you see them in the courtroom?
A I don't, no.
Q You don't?
A No.
Q Okay. Were they white males, were they black males, were they --
A They were white guys in suits.
Q Okay. Two white guys in suits?
A Yes, sir.
Q All right. And were they close enough to you and to -- or to Mr. Spirakis to overhear the conversation that you had with him or that he had with you?
A If they were listening, yes, sir, they could have heard.

Q Okay, all right. But you don't know who they are?
A I don't.
Q Did you try to point them out to the solicitor or to the sheriff's department as being witnesses to this allegation that Mr. Spirakis --
A I told them who was in the room and who I thought might have heard. A reporter was right outside the room and I thought he might have heard too, but apparently he didn't.
Q Why do you say apparently he didn't?
A Because they asked him.
Q Who asked him?
A My lawyer or the solicitor, I'm not sure. One of them.
Q All right. So Mr. Galmore is the one who asked the people if they overheard a conversation?
A I'm not sure if it was the solicitor or Mr. Galmore, one of the two.
Q All right. And did Mr. Galmore indicate to you that they overheard the conversation?
A No, he did not.
Q All right. So your daughter was coming into the room, and you said that Mr. Spirakis was walking behind her?
A Yes.

Q All right. To your knowledge, had they had any conversation before they got to the room?
A No.
Q Okay. Did he say anything to your daughter other than the two things that you said here today?
A No.
Q All right.
MR. WILSON SR.: The Court bear with me just one second, please.
THE COURT: Certainly.
Q I just want to ask you one other thing while you're under oath. Did you say that you had or had not made direct contact with Mr. Spirakis since his release from J. Reuben Long?
A We have talked, yes. He came to my house on a bicycle, and he's called numerous times. So, yes, I mean, I've talked to him.
Q Well, let me rephrase it and ask you this way. Have you initiated contact with Mr. Spirakis since his release from prison?
A No.
Q Or from jail. You have not?
A No.
Q Either by social media or by text or by phone, you have not?

A I didn't initiate it, no. But he's text me and I've text him back, yes.
Q Okay. All right.
MR. WILSON SR.: No other questions, Your Honor.
THE COURT: Ms. Andrew?

REDIRECT EXAMINATION

BY MS. ANDREW:
Q Ms. Honeycutt, did you fear for your life when Mr. Spirakis made those threats against you?
A Yes, ma'am.
MS. ANDREW: No further questions for this witness, Your Honor.
MR. WILSON SR.: No other questions for this witness. Can I have one second?
THE COURT: All right. You may step down.
MS. HONEYCUTT: Yes, sir.
THE COURT: Thank you.
(Witness excused.)
MS. ANDREW: Your Honor, the State would like to call SS [redacted] who also witnessed.
THE COURT: Certainly.
MS. ANDREW: Could we get SS [redacted].
SS [redacted], after being duly sworn, testified as follows:
THE CLERK: Please be seated. Please speak into

the microphone, and state your full name.

MS. HONEYCUTT: SS [redacted]. It's about this whole -- I was coming back from the bathroom --

THE COURT: Wait a minute.

MS. ANDREW: Let me ask questions; okay?

DIRECT EXAMINATION

BY MS. ANDREW:

Q Can I call you SS [redacted]?

A Yes.

Q Okay. SS [redacted], how old are you?

A I'm 15, I just turned 15.

Q Okay. And who is your mother?

A Lindsay Honeycutt.

Q Who did you come to the courthouse today with?

A Lindsay Honeycutt.

Q Okay. Can you tell me what happened when you got here; where did you go?

A We came straight up here, I think. And we -- yeah, we saw the lawyer. And then we -- he told us to wait in the lobby thing or whatever.

Q In the lobby. Were you waiting in the waiting room where there are also chairs?

A Yeah.

Q Okay. And who were you with?

A My mom.

Q Was anyone else there with you?
A Two dudes walked in later on. I think they were lawyers, they were in suits and stuff.
Q Okay. They were wearing suits?
A Yes.
Q Do you know if they were white or black?
A They were white, I think, yeah.
Q Okay. And when you were in that room with your mother, did you have occasion to run into the Defendant, Mr. Spirakis?
A I was walking back from the bathroom, and that's when he came up. And he said to my mom that I didn't hear all of it, but he said that if he didn't like go to jail today or whatever that he would kill the family.
Q Okay. Did you -- did that scare you?
A Yeah.
Q Were you afraid for your life?
A Yeah.
Q Did anyone else hear that?
A The person that does -- one of the camera guys, they were right next to the thing. I don't know if they heard or not. And then, the other two dudes, they might have heard.
Q Okay. Did you know Mr. Spirakis prior to today?

A Yeah.
Q So you could -- when you saw him, you knew who he was?
A Yeah.
Q Okay. Is he present in court today?
A Yeah.
Q Where is he?
A Right there (indicating).
Q He's seated at the Defense table?
A Yeah.
Q Wearing a tan colored suit?
A Yeah. I said to her that he was wearing tan before I saw him again.
Q Okay. So were you present just a few minutes ago while your mother testified as to this incident?
A No. I was in the other room.
Q In the waiting room?
A Um-hum.
Q Okay. Do you know of any other occasions during Mr. -- Mr. Spirakis has threatened your mother or your family?
A No. I -- no.
Q Okay.
A Oh, well, yeah, actually, he -- he's been calling my nana a lot. I mean, I haven't heard him. I've

heard her say about it, and I've heard mama talk about it. And he also got ahold of my aunt.

Q Okay. Who's your nana?

A Rebecca Sullivan.

Q Is that Lindsay Honeycutt's mother?

A Yes, ma'am.

Q And where do you reside?

A I live with my grandmother and my mom and my papa and my sister.

Q Okay. So when you say your grandmother, do you mean your nana?

A Yeah.

Q Ms. Sullivan? Did I get the name right?

A Yes, ma'am.

Q Okay. Can you think of anything else you need to tell us about this event?

A No, ma'am.

Q Okay.

MS. ANDREW: Please answer any questions Mr. Wilson has.

CROSS-EXAMINATION

BY MR. WILSON SR.:

Q SS [redacted], I'll try to be brief. But just let me ask you, you said that you were coming from the restroom going back to the sitting area; is that

correct?
A Yes, sir..
Q Tell me exactly what it was you overheard as best you can word for word, as best you can.
A I didn't hear all of it, like I said, because I was walking back. But he said that if he didn't go to jail today that he would kill us.
Q Well, let me ask you this. Was he behind you or was he already there talking to your mom when you came up?
A He was already talking to my mom.
Q Okay. So he didn't come into the room behind you?
A No.
Q That's not true?
A No.
THE COURT: Well, was he following you or not?
MS. HONEYCUTT: No, he wasn't following me. I was in the bathroom, and then I came back out. And then he was walking out as I -- you can check the cameras.
THE COURT: He was walking out?
MS. HONEYCUTT: Out. He talked -- he finished talking to mama where I heard the last part of it, and then he walked out.
THE COURT: Okay, all right.
MR. WILSON SR.: I don't have any other questions.

MS. ANDREW: Nothing further from the State, Your Honor.

THE COURT: All right. You may step down. Thank you.

(Witness excused.)

THE COURT: Mr. Gerald, is this your detail?

THE DEPUTY: Yes, sir.

THE COURT: Is that waiting room being videotaped?

THE DEPUTY: I believe so.

MS. WALTER: May we approach on that issue, Your Honor?

THE COURT: Certainly.

(Discussion off the record.)

MS. ANDREW: Your Honor, the State calls Tanya Root to the stand.

THE COURT: All right.

TANYA ROOT, after being duly sworn, testified as follows:

THE CLERK: State your full name and spell your last name.

MS. HONEYCUTT: Tanya Root, R-O-O-T.

DIRECT EXAMINATION

BY MS. ANDREW:

Q Ms. Root, where are you employed?

A The solicitor's office.

Q Okay. A few minutes ago did someone ask you to try and determine if there was a tape of the waiting room on the third floor outside of this courtroom?
A Yes, ma'am.
Q Were you able to do that?
A No, ma'am.
Q Okay. What did you determine?
A We determined that the motion detector on the camera on the far end of the hallway was not triggered. So you could not see the second door of the waiting room.
Q Okay. Were you able to pull any tapes that showed either Lindsay Honeycutt, her daughter SS [redacted] or the Defendant, Mr. Spirakis?
A Yes. We saw him walking the hallway, and we saw them sitting in the waiting room.
Q Okay. And could you see Mr. Spirakis in close proximity to Lindsey Honeycutt or her daughter?
A We saw him probably pass by the door --
Q Okay.
A -- of the waiting room, yes, ma'am.
Q Okay.
MS. ANDREW: Thank you. Please answer any questions Mr. Wilson has.
THE COURT: MR. Wilson?

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MR. WILSON SR.: Your Honor, I object, first of all, to this testimony. I'm not sure where it was going. But I've not seen the video, the Court's not seen the video. And I'm not suggesting that anybody is not telling the truth, but if we're going to take some action, punitive action, I need to see that video.

THE COURT: Can we make it available?

MS. ANDREW: Can we play the video? Yes, sir.

THE COURT: I mean, is it like available here, or do we need to take a recess or --

MS. ANDREW: We have to ask the witness, Your Honor.

THE COURT: Do we need to go down to the sheriff's department, or what do we need to do?

MS. ANDREW: A brief recess to get the tape.

THE COURT: Okay, all right. Let's take ten minutes or so.

MS. ANDREW: Thank you, Your Honor.

THE COURT: Mr. Gerald, would you take possession of the tape?

THE DEPUTY: Yes, sir.

THE COURT: Okay, thanks. All right. Thank you.

(Witness excused.)

(WHEREUPON, a brief recess was taken at approximately 1:50 p.m.)

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THE COURT: Thank you, please keep your seats. All right. Now, where are we now?

MS. ANDREW: Your Honor, we were -- we took a recess to review the tape, and Your Honor, I think has reviewed --

THE COURT: And I think that we had a discussion about that. I'm very concerned about the allegations. I understand the tape really doesn't show much of anything, but I'm inclined to revoke bond at this time. Thank you.

MS. ANDREW: Your Honor, I have a Form 4 I can pass up. And we previously passed up the State's written motion to revoke the bond, if you'd like. Sign a Form 4 order.

THE COURT: I have the motion.

MS. ANDREW: Yes, sir. I just wanted to put it on record that we already passed it up.

THE COURT: You passed it up. And I find that there is significant evidence of flight and a danger, and I'm going to revoke bond at this time. Thank you.

MS. ANDREW: Thank you, Your Honor.

THE COURT: All right. Now, what do we have?

MS. ANDREW: Your Honor, the Defense has several motions and the State has several motions. My suggestion was to decide the Defense motions in regard

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to mental health records first.

THE COURT: Very well, let's have that then. Okay, Mr. Wilson.

MR. WILSON SR.: Your Honor, if it please the Court, one of the things that -- and I filed all these motions, I don't know if the Court has them.

THE COURT: I do not.

MR. WILSON SR.: All right. Let me see, can I find them. I don't have them in that order.

THE COURT: I think Alison can print that up for me.

(Discussion off the record.)

THE COURT: All right.

MR. WILSON SR.: Judge, that first motion is a motion to compel. We actually sent a subpoena. I understood at the time that I sent it that a subpoena is not sufficient in order to get mental health records.

THE COURT: Yeah.

MR. WILSON SR.: But I sent it anyway and asked them to be present on tomorrow morning at 10 a.m. And hoping that the Court would hear the motion at that time to compel the Lighthouse to turn over the --

THE COURT: Well, you're client's constitutionally entitled to the presence of witnesses.

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MR. WILSON SR.: Yes, sir.

THE COURT: Okay. What about the State's position on that?

MS. ANDREW: Your Honor, the State's position is that those records are statutorily protected by Section 19-11-95 of the South Carolina code. And the first --

THE COURT: Can you pass it up.

MS. ANDREW: Yes, sir.

THE COURT: You got a copy of it?

MS. ANDREW: The first inquiry -- I'll pass up a case too, if you'd like, Your Honor -- would be whether or not the witness consents to the disclosure of your records. If she does not --

THE COURT: Well, let me ask you this. If she's going to be a witness against them and those records may contain exculpatory --

MS. ANDREW: Yes, sir.

THE COURT: -- materials, now, why would he not be entitled to that?

MS. ANDREW: That's -- the highlighted portion of that case is kind of how the Court of Appeals or Supreme Court has suggested that the Court deal with that issue, Your Honor. Here's the rest of it.

THE COURT: All right. Our Supreme Court indicates that I should review those records. Now,

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where are we on that? I mean, I don't have those records before me.

MS. ANDREW: Your Honor, Mr. Wilson would have to get those records provided to you, and you would have to have an opportunity to review them.

THE COURT: Well, he can't get them to provide them to me until -- I tell you what I'm going to do.

MS. ANDREW: You have to issue an order.

THE COURT: I'm going to issue an order requiring their production in the morning with the custodian of those records. And I will at that time review the records.

Mr. Wilson, I want you to be prepared in the morning to tell me why you need them.

MR. WILSON SR.: Yes, sir.

THE COURT: I think that's the standard set by the Supreme Court in the Blackwell case; okay?

MR. WILSON SR.: Yes, sir.

THE COURT: And once I find out why you need them or what you need, I will review them and then I will make a determination of whether or not they are relevant, whether they meet the 403 test, 401 test, and whether they are contrary to the statute; okay?

MR. WILSON SR.: Yes, sir.

MS. ANDREW: Thank you, Your Honor.

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THE COURT: I'd like a little order on that, Mr. Wilson, before I leave today so you can have it served; okay?

MR. WILSON SR.: Yes, sir, I will.

THE COURT: In fact, Mr. Wilson, if you have staff here to prepare that order, it's 3 o'clock.

MR. WILSON SR.: Yes, sir.

THE COURT: You might need it in order to get it to them.

MR. WILSON SR.: Yes, sir, I will.

THE COURT: All right. Yes, sir.

MR. WILSON SR.: Your Honor, my next motion --

THE COURT: Make your order say that they are sealed for review by the Court, okay. I want them delivered sealed. All right, thank you.

Okay. And --

MR. WILSON SR.: Your Honor?

THE COURT: -- Mr. Wilson?

MR. WILSON SR.: Yes.

THE COURT: Do we need anything else on that?

MR. WILSON SR.: Not on -- not on the records, Your Honor.

THE COURT: All right, sir.

MR. WILSON SR.: Your Honor, the other motion or one of the other motions that I have is the Defendant's

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criminal history. Now, I understand that the State intends to offer the Defendant's criminal history even if the Defendant does not take the stand. And --

THE COURT: Isn't it required as part of the State's showing?

MS. ANDREW: It is, Your Honor. It's an element of the crime which the Defendant is charged. So it would be required of us to put up a witness to say that he is currently a registered sex offender.

THE COURT: And that is in reference to which charge?

MS. ANDREW: It is in reference to the criminal sexual conduct with a minor in the first degree under subsection B.

THE COURT: And read to it me, please.

MS. ANDREW: A person is guilty of criminal sexual conduct with a minor in the first degree if the actor engages in sexual battery with a victim who is less than 16 years of age, and the actor has previously been convicted of, pled guilty or nolo contendere to or adjudicated delinquent for an offense listed in Section 23-3-430(c) or has been ordered to be included on the sex offender registry pursuant to Section 23-3-430(d).

THE COURT: Now, Mr. Wilson, occasionally we have statutes which permit a stipulation, for instance, the

DUI statute. I think it still -- rarely comes before me, but -- and I think it's still the law -- that a criminal defendant may stipulate to the jurisdiction and file a motion in limine as to a previous DUI offense.

But I think our courts have said on more than one occasion that failing that, it becomes a matter for -- a matter of proof, an element of the offense, and the State must put up evidence to establish that. I mean, isn't that the law as it stands in South Carolina?

MS. ANDREW: It is, Your Honor. And I do have a case on that, it's a burglary case that deals with that. I also have an unpublished opinion from the Court of Appeals that said the State's not required to stipulate to that fact under this particular statute. And we do not wish to stipulate to that.

THE COURT: And I understand that. And I believe that there are instances where the State can agree to a stipulation, even if it's not statutorily.

MS. ANDREW: Yes, sir.

THE COURT: And the example I gave before a few moments ago, it is statutory and the State must consent to the stipulation.

MS. ANDREW: Yes, sir.

THE COURT: But that doesn't apply in this

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particular instance, as far as I know. How about that, Mr. Wilson?

MR. WILSON SR.: Well, Your Honor, that's my issue with this.

THE COURT: And I know you're looking at it from a 403 standpoint.

MR. WILSON SR.: Yes, sir.

THE COURT: It's the prejudice substantially outweighs any probative value. Of course, the probative value is that it meets the requirements of the statute.

MR. WILSON SR.: Yes, sir.

THE COURT: There's no other way to prove it. Isn't that the test that the State has repeatedly used when it's evidence that there's no other way to prove the element of the offense without its introduction, then it has great probative value. I mean, isn't that kind of the language that we've always used?

MR. WILSON SR.: Yes, sir. And we don't dispute that, we don't dispute that that's the law. What my position, though, is is that we are more than willing to stipulate to that issue, that he does have a record for lewd act on a minor, and he is on the -- and he's a registered sex offender. There is no disputing that, that is correct. And we don't contest that whatsoever

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during the course of this matter.

My concern, though, is to tell a jury that information before they've even -- before he testifies or in case he doesn't even testify, they would have that information, that is highly, highly prejudicial --

THE COURT: All right, sir. And I agree.

MR. WILSON SR.: -- in this kind of a case.

THE COURT: And I agree with you. But it is part of the statute. And I would respectfully deny your motion in that regard. However, I will leave it open. If you can find me some authority --

MR. WILSON SR.: Yes, sir.

THE COURT: -- by tomorrow morning that would say that you have the right to stipulate to that element of the offense, again, I would allow to you present that and I would reconsider it. However, I think it fails under a classic 403 objection. Okay?

MR. WILSON SR.: Thank you, Your Honor. Your Honor, this issue goes more to the heart of it. And when I was drafting it -- and I apologize, I'm on this motion for an in-camera hearing.

THE COURT: Okay.

MR. WILSON SR.: And this is an in-camera hearing, Your Honor, in order to determine whether or not the minor victims who -- or at least the alleged minor

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victims in this case can identify the person that they claim molested them. And I think that before they are allowed to testify --

THE COURT: You don't want him to be sitting at the Defense table?

MR. WILSON SR.: He's the only one there, so there's nobody else to point to.

THE COURT: And basically you're saying I could testify and identify him?

MR. WILSON SR.: Yes, sir. And because there is nobody else here except me and him. And the only thing, the only reference to him by these minors has been Pete. That's it. There is no second name, there is no identification of the person. That's all that I know. And I think that before --

THE COURT: Well, how do you suggest that we do that, then? Are you talking about, you know, let's have a line-up --

MR. WILSON SR.: Yes, sir. That's exactly what I'm asking.

THE COURT: -- of a bunch of eight year olds?

MR. WILSON SR.: Yes. That's exactly what I'm asking. That's exactly what I'm asking, is that before they be allowed to testify that -- how do we know that this is the Pete, other than that's what they were

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saying back then? But if they don't know who Pete is, you know, Pete could be some 400-pound black guy. I don't know. But my point is is that we don't know that this guy was the Pete that they were referring to because that's the only name that they gave them. And what I'm going to show the Court later is that that name was suggested to them on more than one occasion by the interviewers.

But we'll deal with that later on, that's not a part of what I'm asking now. What I'm simply asking is that there be some way for these minors to identify the person who did these acts to them, specifically this Pete person, if they can. Because if they can't, then really I don't know how are we going to go forward if they say, we don't know, we don't know, or if they can't identify anybody.

THE COURT: Well, I mean, that goes to whether or not they intend, or the State intends, for them to point someone out. How many times have we tried cases in this court where the victim has no idea who the Defendant was, never saw the Defendant. It was dark, I couldn't tell. How many times have we had them say, I can't identify him.

I mean, that's not fatal to the case. You're suggesting to me that an eight-year old would have the

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presence of mind and understanding of the system to figure out that the person sitting with you is Pete. Yes, Ms. Andrew?

MS. ANDREW: Your Honor, the first thing I would like to say is that the Defendant looks markedly different than he does -- than he did when the children knew him back in 2015. I have a picture I can pass up of what he looked like then, you can see what he looks like now. I don't know what they will say.

THE COURT: Well, why can't we --

MS. ANDREW: Say about that --

THE COURT: -- show them photographs of him back then, and then someone else to identify the photograph, or, you know, what...

MR. WILSON SR.: I don't have any objection to --

MS. ANDREW: Well, the police never did a photo lineup because they identified him by name at the time. The codefendant can also --

THE COURT: I have a real issue if -- could I see the photograph. And I would assume they've not seen him since then.

MS. ANDREW: I don't know what they...

THE COURT: I would suggest that, you know, maybe they can't. Maybe they look over and point at me. I don't -- it certainly wasn't me, but how do -- you

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know.

MS. ANDREW: Your Honor, the only case law I can find --

THE COURT: These are very young children.

MS. ANDREW: Yes, sir.

THE COURT: They're very young children. And this offense occurred three years ago, or allegedly occurred three years ago?

MS. ANDREW: That's correct, Your Honor. They were four and five years old when this occurred, so I'm not sure what they can identify now.

THE COURT: Do you suggest that their identification today would even be credible?

MS. ANDREW: Your Honor, we were going to have the codefendant who is testifying identify the Defendant as the perpetrator of the abuse.

THE COURT: You don't have any intention of asking the children?

MS. ANDREW: No, sir. And we did -- there's never been a photo lineup that's suspect in any way in this case that would require us to have an in-camera hearing to remedy a suspect photo lineup. We've never showed them pictures of the Defendant at any time.

THE COURT: You know, typically we have the show up at the arrest, we have a lineup. We don't have any

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of that here.

MS. ANDREW: That's correct. It's just the name.

THE COURT: Is the question -- isn't it all cured by you just not asking the question?

MS. ANDREW: I think so, Your Honor. By neither one of us asking the question.

MR. WILSON SR.: I can't agree to that. I mean, I have --

MS. ANDREW: And I can't preclude the possibility that they would spontaneously identify the Defendant. I mean, they are eight years old. I can tell them don't identify anybody, but whether or not they -- you know, who knows.

THE COURT: My feeling is they probably won't be able to.

MS. ANDREW: He looks so different, yes, sir.

THE COURT: I mean, I raised two of them. And I've got three grands now. And they are about that age. And quite frankly, I don't know if they would recognize somebody they saw yesterday. I just don't know. I'm sort of wondering what -- what do you want me to do, Mr. Wilson, again?

MR. WILSON SR.: What I want -- and Your Honor, this is only a part of the reason that I want it -- what I want is for them to see if the kids can identify

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the person that they call Pete, if they have any way of identifying that individual.

THE COURT: Let me ask you this. Would your client consent to absenting himself during their testimony? You show them a photograph.

MR. WILSON SR.: Well, if I just show them one photograph of one person and say, I mean, I got a 50/50 shot. They say, well, yeah, or if they say, no. That's not -- that would not be a good plan. Now, if I had three or four photographs and say, can you tell me which one of these guys, if any one of them, assaulted you, that might be a whole different response. Because then they got something to choose from.

But I just give them one photograph of the Defendant and say is that the guy that did this to you, and they say, yeah --

THE COURT: And you know you got the issue of 12 jurors sitting there thinking...

MR. WILSON SR.: Which is the other concern that I have. You know, this is very --

THE COURT: You know, sometimes when you grasp at a straw, the fellow on the boat doesn't throw you a life preserver.

MR. WILSON SR.: Which is why I'm trying to get this done in camera and not in front of the jury.

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THE COURT: And I understand, Mr. Wilson. But, you know, it's a quandary, but I don't really know -- I haven't heard anything from you that would help me with this, I mean.

MR. WILSON SR.: Judge, let me --

THE COURT: I mean, if he's sitting there and you want to show them five or six pictures, or if he leaves and you want to show them five or six pictures, what do you -- I'm not going to let you round up ten people here in Horry County and all have them stand up out there and say, which one is this. How -- I mean, first of all, how does that play into the record?

MR. WILSON SR.: I would want to do it by photographs. If we are going to do it, I would want to have four or five photographs of white males. I'm not even sure that that's exclusive, that it's only --

THE COURT: Wouldn't they have to remove your client from the courtroom during that test?

MR. WILSON SR.: Yes, sir, if I'm going to do it that way. Because if his picture is in that group, I can't let him sit here because then that would destroy any integrity that the lineup might have. So yeah, I would ask that it be done -- that's why I was asking --

THE COURT: Well, I will grant your motion to allow your client to absent himself from the courtroom

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during that testimony. He has the right to do that.

MR. WILSON SR.: Yes, sir.

THE COURT: But it will have to come from you.

MR. WILSON SR.: Yes, sir.

THE COURT: And if you want to do that and if on cross-examination you want to show these children some photographs and say, do you see Pete in this array of photographs, I personally don't -- I don't see a problem with that. Do you --

MS. ANDREW: Well, Your Honor, if the State's not seeking to introduce it, I don't think he should. But I would just say that if he does do that, we would think that opened the door to allow our expert to testify about what a child that age could and could not identify and how it would affect their memory.

THE COURT: I think absolutely she would have the right to do that. If you can qualify someone in that field.

MS. ANDREW: We have someone, we can qualify them.

THE COURT: I mean, we're talking about eight years olds.

MR. WILSON SR.: Yes, sir.

THE COURT: Eight year olds. Think about Ralph Jr. when he was eight, Mr. Wilson.

MR. WILSON SR.: He's a big eight now, judge.

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THE COURT: He's way past eight, but my goodness. An eight-year-old child, I don't think any reasonable juror is going to put a whole lot of weight -- and this is just my opinion, jurors may look at it differently. But I personally wouldn't put a lot of weight on what an eight year old -- as far as the identification goes -- saw when he was five. I would listen more to what he tells me.

I would want to know how he relates this identification to the -- you know, it was my uncle, you know, it was someone who was in my house all the time. It was my mother's friend. I think that adds weight to it. But put an eight year old, said I saw somebody one time when I was five years old, maybe they can identify them or not. But I think any juror would look at it with some suspect.

MR. WILSON SR.: Yes, Your Honor.

THE COURT: You know, and say, this is a child. I will allow you, if your client chooses to absent himself during that child's testimony, if you want to cross examine the child and show the child several photographs, I'll allow you to do that.

But you are opening the door to Ms. Andrew putting up someone to testify as to how a child makes an identification, whether it's reliable, whether it's not

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reliable, that sort of thing. I have to let her do it. Because you're going to argue to the jury, this child is not able to identify him and she should be able to or he should be able to. You know, I think she can counter that.

MR. WILSON SR.: Your Honor, would you bear with me just one second.

(Discussion off the record.)

MR. WILSON SR.: All right, sir. Judge, the other issue I had was during one of the -- and this is kind of related to why I'm approaching this this way with the photos -- in one of the forensic interviews of the male child, Brother, a forensic interviewer determined that he did not know right from wrong at the time they did the initial interview.

THE COURT: And we talked about that.

MR. WILSON SR.: Yes, sir. And that adds to my whole problem with the children testifying. Because if he -- because at the time, I think, he was four years old when that initial interview was done.

THE COURT: Right.

MR. WILSON SR.: He's now eight, seven years old.

THE COURT: Okay.

MR. WILSON SR.: And so he's three years older. Obviously he's a little bit more capable of testifying.

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THE COURT: Oh, there's a world of difference between --

MR. WILSON SR.: Yes, sir.

THE COURT: -- five and eight, four and eight, there's a world of difference. They become articulate at that time.

MR. WILSON SR.: That's right. And that's what my concern is, is that he has been in this process now for the last three years. He is certainly far more capable of testifying now about what he says happened to him and what other people have told him and what he had learned in these three years than he was back then. And if he had come to court and the Court was trying to qualify him to testify back then, the Court --

THE COURT: Isn't that the difference? He was not under oath.

MR. WILSON SR.: He was not.

THE COURT: He was not required to be under oath. It was not a requirement that he be found to know right from wrong. And I don't know how the questions were put to him. But it was -- now he's testifying. And I have to qualify him as of this moment when he testifies, do you know right from wrong, do you know what it is to lie, do you know what it is to tell the truth. Do you know the difference from the truth and a

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lie. Those are the kind of questions that I'm interested in for him to testify at this hearing.

MR. WILSON SR.: Yes, sir.

THE COURT: And, of course, he's subject to your cross-examination.

MR. WILSON SR.: I have no objections to him testifying here this week. That's not my point.

THE COURT: Okay.

MR. WILSON SR.: My point is that there is a video of testimony that he gave earlier back three years ago when he did not know right from wrong. And what I'm asking the Court to consider doing is not allowing that testimony from three years ago.

MS. ANDREW: Your Honor, the State also has a motion to admit the child's out-of-state statement pursuant to a statute that allows us to play that statement. We have the forensic interviewer who conducted that interview here. It's not my understanding that that was her finding. But we can put her up and she can testify.

We would like to play the Court -- that's just the procedure that the Court's have upheld -- play the tape in its entirety, watch the whole thing and then argue about portions of it. At the end if we need to question the forensic interviewer about how she

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questioned and what her finding was, of course.

THE COURT: Of course. And we're not going to use -- we're not going to qualify her as an expert.

MS. ANDREW: No, sir.

THE COURT: We're not going to allow any testimony which may be construed as bolstering the child's testimony or attesting to or giving an opinion as to the truth, the voracity of the child. Of course, that would be inappropriate under the latest line of cases.

MS. ANDREW: That's correct, Your Honor. And we would just conduct an in-camera hearing where defense counsel or Your Honor could question the interviewer about questions that she's asked. She can explain how all that works, so you can make a determination.

THE COURT: Okay. Well, don't we need to look at it right now, Mr. Wilson?

MR. WILSON SR.: Yes, sir.

THE COURT: Okay. Well, let's go ahead and do that.

MR. WILSON SR.: Your Honor, can I take about five minutes so I can call this over to my office, and they can draft an order and bring it back to me.

THE COURT: Okay, all right. Yeah, let's do that so that they'll have an opportunity.

MR. WILSON SR.: Thank you.

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THE COURT: And Ms. Andrew is going to have to set up; right?

MS. ANDREW: Yes, sir.

THE COURT: All right. Let's take a minute or two while Ms. Andrew does that.

(WHEREUPON, a brief recess was taken at approximately 3:22 p.m.),

THE COURT: We are, I think, about to play some interviews of some children. I do not want any live stream audio or otherwise. These are children being interviewed. And until I see it, I certainly don't want it made public. Thank you.

All right. Ms. Andrew, Ms. Walter, who will tell me what we're going to see here and what we're going to do?

MS. WALTER: Well, Your Honor, the State is going to call Dianne Nordeen.

THE COURT: All right. Ms. Nordeen, come around, please, thank you.

DIANNE NORDEEN, after being duly sworn, testified as follows:

THE CLERK: If you'll state your full name and spell your last name.

MS. HONEYCUTT: Dianne, Nordeen, N-O-R-D-E-E-N.

THE COURT: Yes, ma'am.

MS. WALTER: Thank you.

DIRECT EXAMINATION

BY MS. WALTER:

Q Ms. Nordeen, if you could, just tell us where you work.

A I work at the Children's Recovery Center.

Q What do you do at the Children's Recovery Center?

A I'm a forensic interviewer.

Q Can you describe for us what a forensic interviewer does.

A I speak with children in a child friendly environment and that's comfortable to the kids so that they don't have to make a statement at the police department about something that may have happened or something they may have witnessed.

Q How are children brought to the CRC, what brings them to your attention?

A We get referrals from law enforcement and the Department of Social Services and sometimes from doctors.

Q Have you had special training in how to conduct a forensic interview?

A I have.

Q Can you describe that training for us.

A I have had a 40-hour training protocol called

Finding Words. I've also had a 24-hour training protocol called Child First South Carolina. I've also had multiple other trainings, over 350 hours specific to forensic interviewing over the past 11 years.

Q And I should have asked this, how long have you been working as a forensic interviewer?

A I've been a forensic interviewer for 11 years.

Q Over that 11 years, approximately how many children have you interviewed?

A I've interviewed over 1600 children.

Q And when you conduct the forensic interview, what are -- is there a special protocol about what types of questions you ask?

A Well, we use a protocol called the RATAC protocol. And we use questions called free recall, focused recall, multiple choice and yes or no questions, which allow a child to either give a narrative or a selective response.

Q What do you mean by selective response?

A Multiple choice gives them multiple choices to select from. And usually when they ask that question, we ask the -- one of the multiple choice to be, or something else. So it doesn't leave them with just the choices we provide.

Also, a yes or no question is a selected response

because they are either going to answer yes or no. But all of those questions are considered acceptable questions for forensic interviewing and are not considered to be leading questions.

Q When you conduct these interviews, are they memorialized in any way, recorded in any way?

A We record -- we have a recording system and record them onto DVDs.

Q Does that provide both a video and an audio component?

A Video and audio, yes.

Q And when you are interviewing the children, do you attempt to make any evaluation of their developmental ability?

A Yes. Generally, we will do a type of developmental assessment just to see if they are on target for their age, such as can they count, identify colors, understand prepositions, you know, such as in, out, inside, outside, things like that.

Q When you conduct the interview, is there sort of a set flow to the interview, or do you just go in and say, hey, tell me what happened?

A We have a set flow that's the RATAC protocol. But it is a semi-structured protocol, so any part of it can be modified or eliminated. And really the interview is

set to the pace of the child. We let the child direct the interview basically.

Q How do you begin the interview?

A Just introductions of ourselves, introductions of the camera and the microphone in the wall, just a little conversation about what we will be doing.

Q Is anyone present in the room other than yourself and the child who you are interviewing?

A No.

Q Are others able to watch the interview as it's occurring?

A We do have a monitor in the forensic office where members of the investigative team can view the interview while it's taking place.

Q Now, directing your attention specifically to February 24th of 2016, did you have occasion to meet two children known as Sister and Brother ?

A I did.

Q Did you conduct forensic interviews with them on that day?

A I did.

Q And, again, were they conducted separately, so Sister alone and Brother on his own?

A Yes. First I interviewed Sister, and then I interviewed Brother.

Q And you followed the same protocol where it was recorded?
A Yes.
Q Did you turn copies of those recordings over to the State for disclosure also to the Defense?
A I did.
Q Have you had an opportunity to review those recordings since that time?
A I have.
Q And are they a fair and accurate representation of what occurred that day?
A They are.
MS. WALTER: Your Honor, with The Court's permission, we'll mark the CD -- just because it's all cued up, we'll mark the CD after we watch.
THE COURT: Certainly.
MS. WALTER: Would that be acceptable?
THE COURT: That would be fine.
MS. WALTER: Mr. Wilson does have a copy of this. We're actually going to -- sorry, we're going to go out of order because we loaded Brother's interview first.
Q But just to be clear, you did audio and video record Brother's entire interview?
A I did.
Q Okay.

MS. WALTER: And, Your Honor, at this time we will play it. So we just got to make sure that the media is not live streaming.

THE COURT: All right. And they've been advised. Ms. Andrew, do you have a copy of the interview statute?

MS. ANDREW: Yes, sir, I do. And I have a copy of our --

THE COURT: Do you have a copy I might just use for a few moments?

MS. ANDREW: Sure.

THE COURT: And I apologize, I'm without a clerk this week. But my admin, Ms. Pogue, is here to fill in as best she can.

MS. ANDREW: Your Honor, I don't have the statute itself printed out. The statute is stated in our motion, and I gave you a case that does -- it quotes the statute itself.

THE COURT: Okay. What do I have here?

MS. WALTER: This is our motion, and the statute is cited down there (indicating).

THE COURT: Okay.

MS. WALTER: And this is the case.

THE COURT: Okay, all right.

MS. ANDREW: Would you like us to get a copy

printed, Your Honor, of the statute?

THE COURT: Alison is going to try to locate it for me.

MS. ANDREW: Okay.

THE COURT: I just like to be able to refer to it. Yes. Are you ready to go forward?

MS. ANDREW: Yes, Your Honor.

MS. WALTER: Your Honor, I can pass up my statute book.

THE COURT: Thank you, Ms. Walter, I appreciate that.

MS. WALTER: And it's right there.

THE COURT: Appreciate it, okay.

MS. WALTER: Your Honor, may we begin the video?

THE COURT: Yes, you may.

(WHEREUPON, the video was played at 3:48 p.m.)

MS. ANDREW: Everyone has to let me know about volume.

Q So Ms. Nordeen, the video has actually started before you actually get into the room?

A Yes.

(WHEREUPON, the video was played at 3:49 p.m.)

Q And Ms. Nordeen, a couple times during the interview we can see you looking at your notes. Why do you do that?

A Prior to the interview, some of the information regarding the investigation is shared. I jot down some of the notes that the detectives ask me to specifically ask about. So when I'm asking those questions, I'm looking at the notes that I jotted down to make sure that I'm asking, phrasing, what was already referred to.

Because always in an interview we're looking for a natural disclosure which would be the ideal disclosure. But for a child that age, they are not able to give a natural disclosure. A natural disclosure would be, tell me why you're living with Gammy. And a teenager could do that and maybe even a ten or 11-year old, but very little kids aren't able to give us that natural disclosure. So we are also permitted to use other approaches.

One of them is called an informed disclosure where we can use externally verifiable information such as law enforcement reports or doctors' reports. And on that day I had access to the law enforcement report and a doctor's report from North Carolina and used information from those referring to those when I asked the questions.

Q Okay. And when you say you are permitted, does that mean you're permitted by the RATAC protocol?

A By our -- by our interview protocol. Those are acceptable approaches for asking questions.
Q And when you left the room briefly at the end or towards the end of the interview, what were you doing at that time?
A I went to the forensic office to ask the detectives who were watching the interview if they had anything else that they wanted me to ask the child that I maybe had missed.
Q Okay.
MS. WALTER: Your Honor, at this time I'm going to -- this is the unredacted copy that was just played. My suggestion would be that we deal with this interview first, get Mr. Wilson --
THE COURT: Yeah, I think while it's fresh on our minds.
MS. WALTER: Right. And, Your Honor, what I did just for your -- I made up a proposed exhibit list that everyone has. So this would be Exhibit 14.
THE COURT: All right.
(WHEREUPON, Plaintiff's Exhibit No. 14 was marked for identification only.)
MS. WALTER: And I would ask that Exhibit 14 be admitted.
THE COURT: Let me ask Mr. Wilson if he's going to

have any objection to that.

MR. WILSON SR.: Just one actually, Your Honor.

THE COURT: Okay.

MR. WILSON SR.: And we might be able to short circuit this. The only objection I have is -- and I haven't had a chance to ask her any questions -- but it would be based on her protocol. My understanding -- and can I ask her a couple questions? It might help.

THE COURT: Certainly. Certainly, certainly.

CROSS-EXAMINATION

BY MR. WILSON SR.:

Q Did I understand you to say that as part of your protocol that you're not to use leading questions?

A Yes.

Q And the reason for that is because they are suggestive, and that might impart to the child what you're wanting to get across or what you're wanting to affirm?

A Yes. And a leading question would generally have the answer to the question in it.

Q Very well. And you specifically ask him, at no time during the interview did he ever mention Pete or Pete Spirakis or Pete at any point in time until you ask him specifically, what did Pete do to you; is that not correct?

A That's not correct.
Q All right. Would you look back through your notes.
A Yes.
Q And let me refer you to the question that you ask, give me one second.
THE COURT: I thought, Mr. Wilson, she asked him if he knew Pete.
MR. WILSON SR.: She said to him that, I have a report, and based on that report I'm asking you whether or not do you know who Pete is. This is what she said, and I wrote it down. I'm reading in your file about Pete.
THE COURT: Right.
MR. WILSON SR.: Did Pete do something to you? That was the question.
MS. WALTER: Your Honor, that's actually not what it said. It said, tell me about Pete.
MR. WILSON SR.: Just play it back, it's right there. And it's on 11:56 on the video.
THE COURT: Excuse me. Are you able to do that, can you go back to 11:56?
MS. ANDREW: Yes, sir. It will take me a minute, but we can do that.
THE COURT: I remember the moment. It was in my

mind. Somehow she -- do you know Pete or can you tell me about someone named Pete or something of that nature. And the child's response was, the same thing, he did the same thing.

MS. HONEYCUTT: It's at 11:56:20. You can slide the green thing over.

MS. ANDREW: Okay, I'll try. That sometimes doesn't work for me.

(WHEREUPON, the video was played at 4:34 p.m.)

THE COURT: Mr. Wilson, I don't think that was leading. I don't think it suggested the answer at all.

MR. WILSON SR.: She gave him, Your Honor. The name had never come up until she asked him specifically about Pete.

THE COURT: She said, do you know someone named Pete. And...

MR. WILSON SR.: And all that the child says, he doesn't give any description of anything other than, yeah, Pete did this to me too -- in response to her question. And the whole idea --

THE COURT: What I'm saying is he gave that response. She just said do you know someone named Pete. Wasn't it --

MS. WALTER: I was reading in your file about someone named Pete. Tell me about Pete.

MR. WILSON SR.: That's correct. And --
THE COURT: And then the child volunteered, he did the same thing as the others did.
MS. WALTER: Yes.
MR. WILSON SR.: Without describing in detail anything that he did, he just said, well, Pete did the same thing.
THE COURT: And I think that may go to the weight of his testimony. It's certainly something that would weigh in your favor. But I don't think the forensic interviewer has violated -- first of all, she's not under the rules we're under -- but I don't think she is leading or trying to trick or carry the child along. In fact, it's just Pete, it's really not anything identifying your client, other than Pete.
MR. WILSON SR.: I know. But it's troubling because we don't know who Pete is and that the child is referring to.
THE COURT: But we don't know who Anthony is from this.
MR. WILSON SR.: That's correct.
THE COURT: We don't know who these other players were other than names.
MR. WILSON SR.: Mommy and daddy.
THE COURT: Yes.

MR. WILSON SR.: I agreed with that.

THE COURT: And we can figure out who mommy and daddy are. But other people are just names.

MR. WILSON SR.: But, judge, when -- Your Honor, when -- this is a whole problem with interviewing children is because they are young. These are very young kids. They are very susceptible to whoever they think the people in authority is naming. And that's why you have to be so careful not to guide them.

THE COURT: And that's the reason we are very careful when we do these.

MR. WILSON SR.: Well, not when the interviewer is giving him a name. She doesn't give any other name throughout this interview except for Pete. And she specifically says, I'm looking at your file, basically, and in your file there is somebody named Pete. Who is Pete and what is he doing.

That -- I don't know how it could possibly be more leading than that to suggest to the child the name of the person. If you say, did mommy and daddy have any other friends --

THE COURT: Well, basically what she asked is who is he?

MR. WILSON SR.: Well, I know. But the child --

THE COURT: I don't even think she got to the

point of asking what did, if anything, did Pete do. The child went into that.

MR. WILSON SR.: Well, she actually does go in and ask --

THE COURT: Afterwards, afterwards, after the child reaches it. But the child didn't give her a chance, it was somewhat spontaneous. As I recall, she asked the child -- it's like asking a witness, do you know somebody named Pete. That's not -- that doesn't suggest whether they know him or not.

MR. WILSON SR.: You know, I understand the Court's ruling and I accept it. You know, I just object to it.

THE COURT: And the child's going to testify, Mr. Wilson, and the child's much older now. And I think that that will -- the statute requires it.

MR. WILSON SR.: Well, and Your Honor, let me ask this question because -- before I go any further. If the Court decides to allow this video, is the Court going to require the interviewer to come back in open court before the jury to authenticate it?

THE COURT: Let's find out what the State's going to try to do.

MS. WALTER: Yes, Your Honor, we were planning on recalling Ms. Nordeen. But obviously the questioning

will be somewhat different because she can't go into the RATAC protocol or any of that.

THE COURT: Right.

MS. WALTER: It will essentially be, where do you work, what did you do, did you interview them, was it recorded, did you turn that over.

THE COURT: So if they go into anything other than that, Mr. Wilson, it will be you.

MR. WILSON SR.: That's correct, I understand.

MS. WALTER: And, Your Honor, Ms. Andrew has already gone through the interviews, and we've come up with areas where we think they would need to be redacted. For instance, when Ms. Nordeen is talking about the truth room or this is a safe place to talk, those -- the State would redact on our own just so that we don't get into any bolstering.

THE COURT: Okay.

MS. WALTER: But if there are other areas Mr. Wilson believes should be redacted, we'd like to get those hashed out now so that we can have the redactions made.

THE COURT: Well, let's do that. I mean, I don't want to come in here tomorrow and get a jury seated, and all of a sudden I've got a three-hour hearing to determine what we're going to redact. Let's do it

tonight.

MS. WALTER: Right. And so, Your Honor, if Mr. Wilson wants to write it down, essentially there are two portions where the truth room is discussed. Then there is one spot where it's a safe place to talk. We've also marked in our own line for redaction what to do when someone touches you, and when Ms. Nordeen says you did a really good job. So that -- because we don't want it to appear that there is any bolstering.

THE COURT: Any bolstering, that's correct.

MS. WALTER: So those would be the spots that we will redact on our own.

THE COURT: All right, Mr. Wilson.

MR. WILSON SR.: I have no objections to those redactions. I think that's correct, and I think they should be redacted.

But I also think that this whole line of questioning where she says, Pete -- where the interviewer says to the child that, I have a file here with Pete's name in it, who is Pete and what has he done, I think that's leading, and I would ask the Court to redact that because I think that that has -- certainly has an impact on the child.

And it's the only time that she does it. She doesn't do that any other phase in this investigation,

or at least that I've seen where she actually calls a name to the child, except -- because the child really identifies the mommy, the daddy and Anthony without any prompting whatsoever.

THE COURT: And a brother of some type. Some other person is there somewhere.

MR. WILSON SR.: The only prompting in this case is -- in this interview is when she asked, when she specifically calls the name of Pete and gets the child to elaborate on it. And I would object to it, and I'd ask that it be redacted from the record.

THE COURT: Okay. And I note your motion, and I would respectfully deny the same.

MR. WILSON SR.: Thank you.

THE COURT: And that's other than -- and I note your objection, Mr. Wilson.

MR. WILSON SR.: Yes, sir.

THE COURT: But other than that and the matters discussed by the solicitor, do you have any other suggestions for redactions?

MR. WILSON SR.: Not on this particular --

THE COURT: Okay. Very well, then.

MS. WALTER: And so, Your Honor, I'll ask that Exhibit 14 which is the unredacted version be admitted now. And then that way we will -- tomorrow before

trial or whenever --

THE COURT: All right.

MS. WALTER: -- we'll have a redacted version.

THE COURT: Very well, okay.

(WHEREUPON, State's Exhibit No. 14 was admitted in evidence.)

MS. WALTER: And then with the Court's permission, we will now play SISTER 's --

THE COURT: All right. Let me ask you this.

MS. WALTER: It is a good bit longer, though.

THE COURT: Again, do we need to go into Ms. Nordeen's experience and all? It would be the same testimony?

MS. WALTER: Now, no.

THE COURT: Okay.

MS. WALTER: Now I was just going to go to playing SISTER's interview.

THE COURT: Okay. Okay.

MS. WALTER: I'm just letting the Court know that it is a bit longer than --

THE COURT: Is that all right with you, Mr. Wilson?

MR. WILSON SR.: Yes, sir.

THE COURT: She plays --

MR. WILSON SR.: Yes, sir.

MS. WALTER: It's a bit longer than Brother 's testimony, or interview.

THE COURT: And let me say that after the hearing, as to the last interview, the young man's interview, I do make a finding that the totality of the circumstances surrounding this interview provides a particularized guarantee of trustworthiness as required by the statute. Okay. I want to make sure the record reflects I made that finding.

I've also considered it under a 403 analysis. I find it to be probative. And the probative value is not -- substantially outweighs the prejudicial value, okay. A 403 analysis -- it's been subjected to 403 analysis as well as statutorily, okay.

MS. WALTER: While we're waiting for it to cue up, do you have the Form 4 that I passed up before? And Mr. Wilson has reviewed it and signed off on it.

THE COURT: Okay.

MS. WALTER: Thank you.

THE COURT: All right.

(Pause in proceedings.)

(WHEREUPON, the video was played at 4:48 p.m.)

MS. WALTER: So do you want us to try and fast forward -- I don't believe Sister says anything during that break.

THE COURT: Let's fast forward it. And Mr. Wilson's seen it, unless he feels it's something inappropriate going on while she's there by herself.

(WHEREUPON, the video was played at 5:43 p.m.)

MS. WALTER: That's essentially the interview. And, again, the State will redact things such as talk of the truth room, the "you are so smart" statements. I think for ease with the jury, we can redact the portions where Ms. Nordeen is out of the room because nothing happens.

THE COURT: Okay.

MS. WALTER: And then the body safety discussion, and again, that "you did a good job" at the end. Those are the redactions that we would make. And then if Mr. Wilson has some others, we can discuss it.

THE COURT: All right, Mr. Wilson, let me hear from you, please.

MR. WILSON SR.: I don't really have any additional things. Your Honor, obviously, we object to the entire video coming in. But beyond that and beyond the redactions that the State has already agreed to make, we don't have any particular redactions that I'm requesting.

THE COURT: All right. I find that this video, like the last one, was -- video is in compliance with

the requirements of 17-23-175(a). I particularly make a specific finding that the hearing was conducted in a fashion and under circumstances that provides a particularized guarantee of trustworthiness as required by the statute.

I also find that this -- that the video as a whole does not violate the requirements of Rule 403 in that it certainly has significant probative value that is not outweighed by the prejudice, unfair prejudice, to a defendant. And I believe that it is admissible, and I so find subject to the redactions that we have already discussed.

MS. WALTER: And, Your Honor, I am providing Mr. Wilson with the redacted version of Brother's interview. If I can have the unredacted version of Sister's, it's Exhibit 13.

And I'd ask that Exhibit 13 be introduced. And I'm highlighting on my own just so I know that the unredacted copies won't --

THE COURT: What we are doing is introducing them for identification purposes; right?

MS. WALTER: They won't go back to the jury, correct.

THE COURT: Well, I mean --

MS. WALTER: Well, Your Honor, we would ask that

they be admitted simply for appellate purposes, so that an appellate court --

THE COURT: Well, they are admitted, they are part of the record. But they are not admitted into the evidence of your case in chief yet.

MS. WALTER: Correct.

THE COURT: Okay.

MS. WALTER: And they are just -- they won't go back to the jury --

THE COURT: Right.

MS. WALTER: -- but they are...

THE COURT: I have made a finding as to their admissibility, okay. You just haven't offered them in your case in chief yet.

MR. WILSON SR.: That is correct.

MS. WALTER: We won't offer the unredacted versions into our case in chief. We're just asking that they --

THE COURT: The redacted ones are a part of the Court's record. The redacted ones, you will offer them in your case in chief; okay?

MS. WALTER: Correct.

MR. WILSON SR.: That's correct, Your Honor.

THE COURT: All right.

MR. WILSON SR.: Your Honor, one other thing. Am

I to understand that these tapes only come in if the children testify?

THE COURT: That's correct. That's what the statute requires. All right. Now, we still have a few other things that Mr. Wilson has pending. Now, I don't know about the State. Do you have anything else, Ms. Walter or Ms. Andrew?

MS. ANDREW: We have a couple of motions, Your Honor. They are pretty simple, I think we can take care of them pretty quickly.

THE COURT: All right. Well, let's go on with this and try to get us in a position so that tomorrow morning I can qualify.

You may step down, Ms. Nordeen, I'm forgetting you, so that tomorrow morning first thing we can in fact qualify this jury.

(Witness excused.)

THE COURT: I think we have a matter that we have to take up very first thing at 9 o'clock; is that correct?

MS. WALTER: Yes, Your Honor.

THE COURT: Okay, all right. Let's go ahead. Let's move on. Who's on deck?

MS. WALTER: Do you have more?

MR. WILSON SR.: Your Honor, one of the motions

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that I made was, the State intends to offer an expert, I think, a Dr. Melissa Muse.

MS. WALTER: Muse.

MR. WILSON SR.: Muse. And while I don't have any objection, and I probably -- my objection is probably premature because I haven't heard her yet in camera to know what she's actually going to say and what their intent is as to the limit of her testimony. So I'm not sure if I'm ready to really argue that motion until I know more about what she's going to say.

THE COURT: And this is the -- regarding child sexual abuse accommodation syndrome?

MR. WILSON SR.: Yes, sir.

THE COURT: Is that the witness?

MS. WALTER: Yes, Your Honor. And --

THE COURT: And really, we don't know how it's going to develop as to whether or not she's even going to testify; do we?

MR. WILSON SR.: Right. And that's why I'm saying my motion may be premature.

THE COURT: Well, Ms. Walter --

MS. WALTER: She's going to testify.

THE COURT: Well, Ms. Walter hands me a motion to offer expert testimony.

MR. WILSON SR.: That's correct.

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MS. WALTER: Your Honor, that was filed some time ago.

THE COURT: Okay. Well, she hands it to me, you know. I have it now, is what I'm saying.

MR. WILSON SR.: Yes, sir.

THE COURT: I don't doubt it wasn't previously filed.

MR. WILSON SR.: I knew she was offering it.

THE COURT: Okay. Well, why don't we hear that, and perhaps that will shed some light on your motion.

MR. WILSON SR.: Well, my position on these experts is that, Your Honor, she can't -- she can testify, but she can't testify on the ultimate issue in the case as to whether or not these children are telling the truth or whether they are lying.

THE COURT: Well, absolutely not, no.

MR. WILSON SR.: And what I'm simply trying to do is put her on notice and the Court on notice that I don't want her saying this stuff and blurting it out, and then I can't...

THE COURT: I think we all know it. And, you know, she -- that's in the jury's province --

MR. WILSON SR.: All right.

THE COURT: -- to determine whether or not the child's testimony is credible.

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MR. WILSON SR.: Yes, sir.

THE COURT: And to have her testify through some expertise or otherwise that in her opinion the children are being truthful or that their body language suggests they're being truthful or anything of that nature would be bolstering which has not been admitted by our courts.

MS. WALTER: Your Honor, if I may, Dr. Muse has never met the children, has never viewed their CRC video, she hasn't spoken with them. She is a blind expert. She has reviewed police reports.

THE COURT: Okay, she's a blind expert. She has not interviewed them?

MS. WALTER: No. She's had no contact with him.

THE COURT: Okay. Then what are you offering her for then, what do you want her to do?

MS. WALTER: For the -- she will be an expert in --

THE COURT: Late reporting or --

MS. WALTER: -- evaluation and treatment of child sexual abuse. So, yes, delayed reporting, grooming, disclosure, developmental capabilities, all of those factors. But nothing specific to these children but just what different factors can impact delayed disclosure, what different factors could impact not

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only the delayed disclosure but the amount of a disclosure.

THE COURT: And that was my understanding why you were going to offer her. Now, Mr. Wilson, what's your position with that?

MR. WILSON SR.: What my concern is is that I don't want the witness to say, based on the fact that I've reviewed these facts and when I found kids in this particular situation and I used this methodology that I use in order to come to this conclusion that these things mean this or mean that, that somehow my -- I've always determined that they were being honest or that my method was successful.

THE COURT: Well, Ms. Walter just said she's not going to testify as to anything as to these children or the specific facts of this case.

MR. WILSON SR.: And that's not how they do it. What they do is they say, yeah, I've looked at all these factors, and because children forget or because they are young or they are immature, but the methodology that I use to analyze this stuff has always led me to a correct conclusion regarding these situations. And that is the same thing in the back door.

THE COURT: She's not going to do that.

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MS. WALTER: No, she's not.

THE COURT: Mr. Wilson, she's not going to do that.

MR. WILSON SR.: All right.

THE COURT: And I think that you are probably correct in saying we are going to have to listen to the testimony, we'll have to follow it closely. I don't know any other way to do it. Of course I'm not going to let her have a witness, even a blind witness, bolster the testimony of the children or suggest that because of his expertise he's able to tell whether or not it's truthful. But he's going to testify, or she's going to testify, I understand, generally, generally, as to things like late reporting, why would this occur --

MR. WILSON SR.: Yes, sir.

THE COURT: -- failure to report and things of that nature which I believe are admissible and subject to expert testimony.

MR. WILSON SR.: And, Your Honor, I --

THE COURT: And I know we're going to have to walk a fine line, but we can do that.

MR. WILSON SR.: Yes, sir. My concern is not so much on direct, my concern is on cross-examination is that when I start asking questions about this, that --

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THE COURT: You might open the door.

MR. WILSON SR.: -- no, sir, these experts look for a way to get that punch line in there whether it's due or not. And once it's done in the presence of the jury, I can't get it undone no matter how much I try. And even if His Honor decides to give some kind of admonishment to the jury, once they say that --

THE COURT: What are you asking me to do, Mr. Wilson?

MR. WILSON SR.: Well, I don't know. I'm just asking you at this point to just hear me and --

THE COURT: And I am, I'm listening.

MR. WILSON SR.: -- and understand that I'm concerned about where this could go and the harm that it could cause in that we can't get it back once it's -- the horse is out of the barn. That's all I'm saying. And I've seen these situations before, and I'm just being cautious about it.

I know that there is no testimony yet, and I will be vigilant, I promise you, when they have witnesses on the stand. But I just know how these things tend to --

THE COURT: And Mr. Wilson, I understand your position. But they are entitled to put up an expert -- a blind expert as to some of these issues.

MR. WILSON SR.: Yes, sir.

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THE COURT: And, you know, we're just going to have to deal with it.

MR. WILSON SR.: All right, sir.

THE COURT: We do it everyday in this court.

MR. WILSON SR.: We do.

THE COURT: Everyday.

MR. WILSON SR.: All right, sir.

THE COURT: All right. Okay, Mr. Wilson, I also look at your motion then, and it would appear to me that you have a motion to disclose Lyle type matters.

MR. WILSON SR.: I think they addressed that already with the --

THE COURT: Well --

MS. ANDREW: We -- Your Honor, we also have a motion, it's a motion for joinder or in the alternative to admit evidence of other acts would be Lyle evidence.

THE COURT: Right.

MS. ANDREW: But we've already provided it, I can give you a copy. But this motion relates to the testimony of the two children themselves.

THE COURT: Okay.

MS. ANDREW: We want to have a trial where both children are able to testify and join those two trials. We're not seeking to introduce evidence of any prior victims or other victims other than Sister and Brother

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Brother .

THE COURT: Well --

MS. ANDREW: So we're asking the Court to make a determination as --

THE COURT: I understand there are multiple charges and two events. But, Mr. Wilson, the similarities and all would be such that, I mean...

MS. ANDREW: It's a common plan or scheme, Your Honor.

THE COURT: Yes. But do you have an objection to these trials being tried, these offenses being tried together?

MR. WILSON SR.: Yes, sir, I do. And let me explain why, Your Honor. First of all, as the Court recalls, with Brother 's testimony, you know, my sole belief is that the only reason that BROTHER ever said anything negative in regards to Pete Spirakis or to a Pete or whoever this Pete is, that it's because that was suggested to him.

And I think that's not necessarily true in the second video where Sister testifies. Because in her testimony, she -- she's the one, at least as I heard it here, bring up the whole idea of it was mom and daddy and Anthony and Pete. And whether or not that's true or not is a whole different issue, but clearly in that

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first tape nobody -- this child never says anything at all about Pete until the interviewer brings it up and raises that issue to him.

The other issue that concerns me is that in regards to this, as I said to the Court earlier, and I would have brought this out had we done the cross-examination, is that the interviewer specifically says in her notes that this child did not know right from wrong at the time the child's testifying talking about --

THE COURT: Yeah. And that, it's interesting, I thought that you were indicating to me in pretrial that the child was asked if he or she knew the difference from right and wrong. And I thought it was Brother. But I didn't hear that question. You're saying that where you got that was you thought the interviewer put it in her notes?

MR. WILSON SR.: It is in the interviewer's notes.

MS. WALTER: Can you tell us where.

MS. ANDREW: Can you point that out to us.

MR. WILSON SR.: I have to find it for you. But it's in here.

THE COURT: But usually that comes up in the form of some questioning of the child. But I didn't see that.

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MR. WILSON SR.: It's there. I mean, I highlighted it, but I have to find it. I got a lot going on here, just a second. It's actually in the case note reports that she submitted.

THE COURT: But my understanding of the rule is that the indictments may be tried together if they arise out of a single chain of circumstances, you know, and if they are proved by the same evidence, are of the same general nature, and that no right of the Defendant's has been prejudiced.

Well, as I hear the interviews, I assume that the testimony is going to be very similar to that. I mean, these children seem to be together. They've witnessed the acts happening. It's the same acts essentially on both children. They are certainly of the same general nature. The charges are the same.

I do not see, Mr. Wilson, where any of the Defendant's rights may be prejudiced by trying these cases together. I understand you're saying that the young boy only mentions him after being prompted to or there being perhaps a suggestion that Pete was -- or some person named Pete was also involved. That's an evidentiary matter.

It doesn't change the fact that the allegations are and what the State must prove are of the same

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general nature, they are proved by the same evidence. The acts, as far as I can tell, were committed together. As I followed the interviews, I think every time both children were together, or it seemed that way to me, and the same thing was being done to them.

I just find that there is no way in which this Defendant is prejudiced, there is no real right of this Defendant that has been prejudiced by trying these cases together. And I think that these indictments may be tried together; okay?

MS. ANDREW: Yes, Your Honor.

MR. WILSON SR.: Yes, sir.

THE COURT: All right. What else do we have?

MR. WILSON SR.: The only -- I think my last motion was to have the State reveal or disclose whatever deal or agreement that they had with the --

THE COURT: Reveal the deal motion; right?

MR. WILSON SR.: Yes, sir. Other than what's in the proffer or anything beyond the proffer.

THE COURT: All right. Tell me, Ms. Walter, I think we touched on this in chambers, and I believe you said that there was no deal; is that right, Ms. --

MS. ANDREW: The deal is Ms. Honeycutt is going to appear tomorrow morning and plead guilty to assault and battery of a high and aggravated nature, one count for

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each child, which is the lesser included of criminal sexual conduct with a minor in the first degree.

THE COURT: No deal as to sentencing?

MS. ANDREW: And no deal as to sentencing. We will help -- and she's going to plead to two counts of unlawful conduct.

THE COURT: And what is her sentence range on those charges?

MS. ANDREW: Her sentence range is anywhere from zero to 60 years. We would like to hold her sentence in abeyance until after we've tried all codefendants to guarantee her cooperation.

THE COURT: All right, Mr. Wilson --

MS. ANDREW: She's at --

THE COURT: -- I have retained jurisdiction. I want to announce this. There is -- if she pleads in that fashion, and she will do it before this trial, then I am wide open as far as sentencing.

MR. WILSON SR.: Yes, sir.

THE COURT: Okay. I am not a part of any arrangements concerning sentencing.

MR. WILSON SR.: Yes, sir.

THE COURT: Okay?

MR. WILSON SR.: Yes, sir. And am I to understand, then, that that's the extent of any offer

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-- Your Honor, what my -- it's one thing to say, okay, I'm offering her two counts of ABHAN, and I'm offering her two counts of neglect or whatever it is.

THE COURT: What again, what was it again?

MS. ANDREW: It's two counts of the lesser included of ABHAN and two counts of unlawful conduct toward a child, which is the neglect statute. It's ten and ten for the unlawful conduct and 20 and 20 on the ABHAN.

THE COURT: Okay. And it's my understanding, and I will take her plea tomorrow with no recommendation. Do you understand?

MR. WILSON SR.: Yes, sir.

THE COURT: That's how I intend to take that plea; okay?

MR. WILSON SR.: All right. And just so I'm clear, the State does not intend to offer her mental health court or anything else?

MS. ANDREW: Your Honor, the Defendant wants mental health court. She has indicated on jail calls which Mr. Wilson has that the State offered her, like say she said five years, then she said mental health court, then she said 18 months probation. But none of that is actually true.

What we said is that we will have her screened for

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mental health court. That's the only promise I could make her. She understands --

THE COURT: Well --

MS. ANDREW: -- if she's going to plead, she's going to testify in front of you and that you will ultimately decide her sentence. And we haven't guaranteed her anything.

THE COURT: Well, I can tell you this. I have never seen a case where mental health court was not recommended that it was even considered by any judge. I don't think any judge can consider it without a recommendation. Now, if there's going to be a recommendation of mental health court, I want to know.

MR. WILSON SR.: Yes, sir.

THE COURT: I think he's entitled to know.

MS. ANDREW: We haven't agreed to recommend mental health court, we agreed to have her screened for mental health court. I don't even know that she would be accepted in mental health court, but she would have to be screened before she could even be accepted.

THE COURT: No.

MS. ANDREW: And --

THE COURT: I'm not doing that.

MS. ANDREW: I understand, Your Honor.

THE COURT: No, ma'am.

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MS. ANDREW: Okay.

THE COURT: He's entitled to know. Now, are you going to recommend mental health court or not?

MS. ANDREW: We agreed to have her screened, we did not agree to recommend. The way the sentencing sheet is there's no recommendation.

THE COURT: So if she passes the screening, you're going to give her a recommendation of mental health court?

MS. ANDREW: Well, I don't really know how to address that because she hasn't be screened. We've told her there's no real deal. She understands Your Honor's position that she will probably get jail time, I've already told that to Mr. Galmore. So she knows that she could spend the rest of her life in jail. She says that on the tape multiple times.

THE COURT: Well, what's going to happen if you come up for sentencing here before me and say, judge, we're pleading her in mental health court, this is a negotiation?

MS. ANDREW: Well, we're not doing that, Your Honor. We've already filled out the sentencing sheet that says no recommendation. And she understands that and her attorney understands that.

THE COURT: Well, why is she even going through

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mental health screening then?

MS. ANDREW: Well, I guess there's no real reason for her to do that other than she wants to do it, in the hopes that you would take -- that you would have mercy on her and somehow allow her to do that.

THE COURT: Well, then what I understand is you are not -- you are pleading her with no recommendation of mental health court.

MS. ANDREW: And we will make that very clear to her, Your Honor. We did tell her she could be --

THE COURT: No, I want you to make it clear to Mr. Wilson.

MS. ANDREW: -- screened.

THE COURT: Mr. Wilson is the one that needs to know.

MS. ANDREW: Well, that's the way we're doing it. That's the only way we can do it. And the sentencing sheet reflects that. It says, no recommendation, it's been filled out.

THE COURT: Okay. All right. Mr. Wilson, she says there's no recommendation. Pleading to those charges with no recommendation.

MR. WILSON SR.: Yes, sir.

THE COURT: Okay?

MR. WILSON SR.: Yes, sir.

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THE COURT: All right. Okay. What else do we have?

MS. ANDREW: You have a motion to quash a search warrant?

MR. WILSON SR.: Really, I do. And I'm not sure it's even necessary because none of the stuff that was taken from that -- we filed a motion, Your Honor.

THE COURT: There's nothing that you got; was there?

MR. WILSON SR.: No.

THE COURT: And there's nothing on the return?

MR. WILSON SR.: That's correct. And there is no -- nothing on the return, so it's pointless at this point.

THE COURT: All right.

MS. ANDREW: We have one photograph from the execution of the search warrant that we intend to introduce.

MR. WILSON SR.: All right.

MS. ANDREW: Do you want to see it?

MR. WILSON SR.: Yeah, let me see it. If it's just a picture of the facility, that's fine. If it's something more, then...

MS. ANDREW: Well, your client may have to identify if that came from upstairs or downstairs.

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(Discussion off the record.)
MR. WILSON SR.: I don't have any objection, Your Honor.
THE COURT: Okay.
MR. WILSON SR.: I would like a copy.
THE COURT: So we don't have a Fourth Amendment issue, then; is that what we're talking about?
MR. WILSON SR.: Yes, sir.
THE COURT: Okay.
MR. WILSON SR.: No, sir, we don't have any Fourth Amendment issue.
THE COURT: Okay. All right.
MS. ANDREW: There may be one other photo that I don't see here, I'll show it to you tomorrow. It's a picture of the interior of the upstairs, and you can see --
MR. WILSON SR.: As long as it's a picture, I'm fine.
THE COURT: Okay, all right.
MS. ANDREW: Okay.
THE COURT: You don't want any physical evidence. All right. Now, I note here, this exhibit list was probably done before I severed these cases, but I see a lot of DNA swabs, serology reports and things of that nature. Is any of that coming in?

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MS. WALTER: It would come in simply because there were items submitted for SLED analysis.

THE COURT: Nothing more than saying we did it, and we didn't get anything; right?

MS. WALTER: Correct.

MS. ANDREW: That's correct.

THE COURT: Okay.

MR. WILSON SR.: That is correct.

THE COURT: Because you don't want Mr. Wilson saying why didn't you do it.

MR. WILSON SR.: Yes.

MS. WALTER: Your Honor, perhaps we could also, if Mr. Wilson would stipulate to the chain of custody, that could cut down on some of this.

MR. WILSON SR.: I will when I can. I mean, if it's not important, then I'm not going to stand up and just object just to be objecting, unless --

THE COURT: Well, Mr. Wilson, would you do me a favor.

MR. WILSON SR.: Yes, sir.

THE COURT: Would you do the Court a favor. Would you look over the list.

MR. WILSON SR.: Yes, sir.

THE COURT: And you know how it works?

MR. WILSON SR.: Yes, sir.

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THE COURT: A lot of this stuff has no evidentiary value other than for them to say, we looked at it, we tried this, and there was nothing.

MR. WILSON SR.: Yes, sir.

THE COURT: If you look at it that way, and you know that's all there is to it, then you can stipulate to the custody on those items. It will save us an awful lot of time.

MR. WILSON SR.: It will. And I will do that.

THE COURT: Because what you're going to do is sit there and say, no questions.

MR. WILSON SR.: All right. Yes, sir. If I can, I will. I will.

MS. ANDREW: I think we just have one more.

THE COURT: All right. Ms. Andrew, you have something else?

MS. ANDREW: It's just State's proposed jury voir dire questions, Your Honor.

THE COURT: Okay. Mr. Wilson, do you have your voir dire questions?

MR. WILSON SR.: No, sir. I can have them in the morning.

THE COURT: Let's try to have those up very first thing in the morning.

MR. WILSON SR.: I will.

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THE COURT: Please be aware of the fact that I don't have my clerk this week. And so any help you can give me by letting me have things early will certainly be appreciated. Certainly Alison is going to do everything she can to keep us moving along. But if we can avoid delay, I would certainly appreciate that.

So if you can get those things here first thing in the morning, you all know I'm usually here early. So let's try to get those for me, let me look at them. You've exchanged them; have you?

MS. WALTER: Yes. We gave those to Mr. Wilson.

THE COURT: You got a witness list?

MS. WALTER: Yes. We're giving that to everyone.

THE COURT: Okay. Get me witness lists, voir dire, and we will try to move on with this jury first thing in the morning; okay?

(Discussion off the record.)

THE COURT: All right. Well, is that all we need to do this evening?

MS. ANDREW: That's all of the State's motions, Your Honor.

MR. WILSON SR.: Your Honor, one last thing is that the Defendant's going to be incarcerated overnight. And what his concern is is that normally when they incarcerate them overnight like that, they

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place them in some little holding cell, and there is -- and he's on medications.

THE COURT: Jade, can that be taken care of? I don't want him kept in a holding cell overnight, I want him put on a regular pod or general population, okay, because he needs to get some rest before we get started in the morning. I just don't want him sitting on one of those steel benches in there all night. Tony, you can take care of that; can't you?

THE DEPUTY: Yes, sir.

THE COURT: All right, there you go.

MR. WILSON SR.: And make sure he gets his medication. He's diabetic.

THE COURT: And his medication.

THE DEPUTY: Yes. They probably have all your records and stuff for that.

(Discussion off the record.)

MS. ANDREW: I will tell you, witness number ten, Heidi Herring, she's on our witness list as well, she e-mailed me over the weekend and it just said, this correspondence is to inform you I'm on medical leave. I may need back surgery. So I don't know. She's an out-of-state witness, if we want her here we probably need an out-of-state subpoena.

MR. WILSON SR.: Oh, boy.

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THE COURT: Oh, gosh.

MS. ANDREW: I sent her an e-mail back saying, do we need to get the authorities involved, and I haven't had a chance to check my e-mail.

THE COURT: I mean, you're not going to get one done.

MS. ANDREW: No. But just so you know. She agreed voluntarily to come for us, and now, I mean, I just sent her something said, when do you want your hotel room, and got that back.

THE COURT: All right. Well, we'll deal with it tomorrow. There's nothing we can do with it tonight; okay?

MS. ANDREW: Thank you, Your Honor.

THE COURT: All right, we're at ease until tomorrow morning. Ms. Andrew, that other defendant will be here at nine; right?

MS. ANDREW: Yes, sir.

THE COURT: Thank you.

(WHEREUPON, the hearing adjourned at approximately 6:32 p.m.)

(WHEREUPON, the hearing resumed on Tuesday, August 21, 2018, at approximately 9:38 a.m.)

THE COURT: Good morning, good morning, good to see you again. Please just keep your seats, keep your

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seats. Good to see you again. I bring you in this morning because this morning we're going to select a jury in the case of the State of South Carolina versus Panteleimon -- have I pronounced that right, Mr. Wilson? I'm not familiar with that, and I want to make sure that...

MR. WILSON SR.: Panteleimon.

THE COURT: Panteleimon Spirakis. Let me talk to you a little bit about this process that we're going to engage in this morning. Yesterday I talked to you about general qualifications as jurors. We discussed generally whether or not you were qualified to sit as a juror, and we did not talk at all about this particular case. Today we're going to ask you some more questions to determine whether or not you would be or should be sitting on this particular jury.

Our goal is to make sure that we have a fair and impartial jury. That's a cornerstone of American jurisprudence for any jury trial is to make sure that we have fair and impartial jurors. Yesterday I talked to you about the different sides of the Court, the civil side and the criminal side. Depending on what type of case that we have before us, we use a different process for the jury selection.

If this were a civil case, we have a very kind and

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gentle way of selecting a jury. Your names would be randomly shuffled and put on a list, and that list would be provided to the attorneys. And you would be given an entirely different number. And the attorneys would talk to the Court about what jurors they would strike and what jurors they would accept, and you would not even know that they were talking about you. You would not know whether or not you were struck by either side.

On the criminal side, we use a different process. You will be required -- again, your names will be randomly shuffled, but we would call your name and you would be required to come forward and stand right up here. And it will go something like this, first the State will either say, Your Honor, present this juror. Or they may say, excuse this juror. If they say, excuse the juror, they have used one of their strikes, and you will return to your seat.

If they say, present the juror, the juror is presented to the Defense. And then the Defense will either say, excuse the juror -- and if the Defense says, excuse the juror, again, you'll return to your seat and you will not serve on this jury. However, if the Defense says, swear the juror, then you will be seated over here. We're going to be going up to a

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courtroom later. But you will serve on the jury.

Now, let me tell you a little bit about that process. Many people find it to be intimidating, embarrassing even, to have to come forward and have one side or the other side excuse the juror or strike the juror. And that's not what we intend. But let me say this. I practiced law for about 32 years. I practiced law more than -- longer than most of the lawyers here in the county have lived.

And as these fine attorneys go through this process, you're going to see them screw up their faces and scratch their heads and whisper back and forth. They will give you the impression that they know what they are doing. And I can promise you they do not. There is nothing, nothing more difficult than the selection of a jury. Isn't that right; Mr. Wilson?

MR. WILSON SR.: That is correct, Your Honor.

THE COURT: Because they don't know you, they have very little information about you. And it's basically a gut reaction. Of course, both sides would like to have jurors that they feel would be more receptive or sympathetic to their position in the trial. That's what lawyers do. But basically, everybody just wants a fair and impartial juror.

So if you're struck, please take it to heart.

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They would probably be happy to have you on the next jury. My mentor and friend, old Judge Floyd, used to tell me, sometimes they strike you because your hair is parted on the left, sometimes they strike you because your hair parted on the right, and sometimes they strike you because you got no hair. Again, it is a very difficult thing for attorneys to do. And if you are not seated, please do not take any offense to that at all.

Now, let me tell you a little bit about this particular case. Do I have the indictments, madam clerk? Thank you very much.

MS. WALTER: Your Honor, may we approach for one moment?

THE COURT: Yes.

(WHEREUPON, a bench conference was held off the record in the presence of the jury panel but out of the hearing of the jury panel.)

THE COURT: Normally when we engage in this process up in the courtroom, we will normally just get a panel of about 30 or 35 people and bring them up to the Court, and we select a jury from that.

This morning we have a case that may have received some publicity, and we want to make sure that we have enough jurors. So we have decided to come down and do

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the actual selection process here in the jury assembly room.

The case begins with what we call indictments. Let me make it very clear to you that an indictment is not evidence. The fact that a person may be charged with an offense, the fact that a person may have an indictment issued against him in no way raises any presumption, any inference of guilt. It is not evidence. An indictment is nothing more than a document that is produced which brings the charge to the Court and informs the Defendant of what he is charged with.

In this particular case, Mr. Spirakis is charged under indictment for criminal sexual conduct with a minor in the first degree. It is alleged -- again, these are allegations; they are not evidence at this point, these allegations are not -- it is alleged that on or about December the 1st of 2014 through April the 30th, 2015, in Horry County, South Carolina, that Mr. Spirakis did willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the first degree by engaging in sexual battery with a minor who is less than 16 years of age.

It is also alleged that he is charged with criminal sexual conduct with a minor in the first

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degree. The first charge that I read to you, the alleged victim is a child who we will now refer to as Brother. He is charged in a second indictment during the same period and in Horry County with engaging criminal sexual conduct in the first degree with the minor SISTER. And, again, the child will be referred to at this point only by SISTER.

He's also charged with engaging a child for sexual performance. It is alleged that in Horry County between the dates of December the 1st of 2014 and April 30th of 2015, he did employ, authorize or induce a child younger than 18 years of age, to wit SISTER, to engage in sexual performance as that is defined by the statutes in this state.

He's also alleged during that same period by separate indictment and during the same time to have employed, authorized or induced a child younger than 18 years of age, to wit Brother, to engage in sexual performance as defined by the statutes in this state.

He is also charged by indictment with sexual exploitation of a minor in the first degree. It is alleged that Mr. Spirakis did in Horry County, again, between December the 1st of 2014 and April 30th of 2015, knowing the character or content of certain material or performance, use, employ, induce, coerce,

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encourage or facilitate a minor, to wit Brother , to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity or a live performance or for a purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity, all under circumstances which a reasonable person would infer the purpose is sexual stimulation in violation of the statutes of this state.

It is also alleged that he engaged in the offense of sexual exploitation of a minor under a separate indictment during the same period involving M. Heavner and that he did engage in or assist others to engage in sexual activity or appear to -- or appear in a state of sexually explicit nudity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexual explicit nudity, all under circumstances in which a reasonable person would infer the purpose is sexual stimulation in violation of the statutes of this state.

Those are the offenses that he is presently charged with and which we will address in this trial.

Now, in regards to the selection of a jury, as I told you yesterday, your truthful response to the

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questions we put to you is so important that at each stage of the selection process and upon final swearing of the jury you're required to be placed under oath. And I am going to ask the clerk to place you under oath again this morning to insure your complete, full and truthful responses to my questions.

Where is my clerk? There she is.

THE CLERK: If you'll please stand and raise your right hands.

(WHEREUPON, all jurors were duly sworn.)

THE CLERK: If you agree with this statement, please be seated. If you disagree, please remain standing.

THE COURT: All right. And let the record reflect that no one remained standing. You'll hear me throughout this process and if you're on the jury panel throughout the trial say that, let the record reflect. And as I explained to you yesterday, everything that happens in this court has to be made a part of a record. So even when there's a nonresponsive question, I have to turn and tell Ms. Bautz what that response was so that it is part of the record. And that's why we do that.

Now, let me ask you this. Is anyone on this jury panel related by blood or marriage, are you close

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personal friends of, do you have any social relationship with, do you know Mr. Spirakis, the Defendant, in this case?

Yes, sir, would you please stand. Do you know him, are you related to him?

JUROR #200: I know him, I know of him. I've never met him, but he lives right behind my house.

THE COURT: All right. Would that fact affect your ability to be fair and impartial from this trial?

JUROR #200: I don't believe so.

THE COURT: Could you give both the State and the Defense a fair trial?

JUROR #200: No, sir.

THE COURT: You could?

JUROR #200: No, sir.

THE COURT: You could not?

JUROR #200: No.

THE COURT: All right. Then I will set you aside. And your number is?

JUROR #200: 200.

THE COURT: 200.

JUROR #200: Yes, sir.

THE COURT: And your name, sir?

JUROR #200: Martin Leonardi.

THE COURT: Thank you very much. You need not

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respond to any other questions I ask.

JUROR #200: Thank you.

THE COURT: All right, thank you. All right. Is there anyone who is a close personal friend of or are you related to, do you have any knowledge of the -- let me say this, the Heavner, H-E-A-V-N-E-R, family here in Horry County?

A JUROR: Would you say the first name, please.

THE COURT: Could you give me the names of the parents.

MS. WALTER: Lindsay Honeycutt and Ambrose Edward Heavner.

THE COURT: Ambrose Edward Heavner was the father, and Lindsey Honeycutt was the mother of the alleged victims. Would you stand, please.

JUROR #330: Yes.

THE COURT: Your number?

JUROR #330: 330.

THE COURT: And your name?

JUROR #330: Gentiana Tabaku.

THE COURT: Okay.

JUROR #330: I believe she might have been my employee a couple years ago.

THE COURT: A few years ago?

JUROR #330: Yes.

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THE COURT: But you're not sure, not enough to remember her name?

JUROR #330: I wasn't informed about the case, you know. I think it's the case, you know, the person that I'm thinking about. But I'm not a hundred percent sure. But I just wanted to say.

THE COURT: Would the fact that she may have worked for you and that you may know her --

JUROR #330: No, no, she worked for me, I know that for sure.

THE COURT: Okay.

JUROR #330: But I'm not sure if --

THE COURT: Would that affect your ability to be fair and impartial in this trial? Could you set that aside, any knowledge you may have of her?

JUROR #330: No.

THE COURT: You could not, all right. Then I will excuse you on this trial. You need not respond to any of my other questions, all right. Thank you very much.

THE CLERK: Ma'am, what's your juror number?

JUROR #330: I believe it's 330.

MS. WALTER: 330.

THE COURT: All right. I'm going to read to you a list of potential, potential witnesses, witnesses who may be called to testify in this case. I ask the

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attorneys to give me the names of anyone who they think might be called, and they have done that.

And I want to know if any of you know these witnesses, if you're related to these witnesses, if you have any social relationship with these witnesses, anything that would give you any bias for or against these witnesses, anything that would make you tend to believe them more or less.

Now, the witnesses are SISTER , Brother [redacted], Dianne Nordeen, King Hemingway, Lori Dudley, Jill -- excuse me, Jill Domogauer, D-O-M-O-G-A-U-E-R; Dennis Lewis, Heather Adkins Wilson, Rebecca Phillips, Timothy Taylor, Natalie Stevens, Heidi Herring. Jashawna -- let me spell it for you, J-A-S-H-A-W-N-A, Bellamy; Howard Loughlin, Dr. Howard Loughlin. Melissa Muse, M-U-S-E, Brian Hudak, Catherine Leisy, L-E-I-S-Y, Doris Yarborough, Courtney Thompson, Charlotte Crowe Pitts, Marcus Rhodes, Chris Graham, George Spirakis, Cheri Lynn Dickerson, Lindsay Honeycutt, Anthony Strickland, Charles Barry Waddell, SS [redacted], McKinsey Heavner, Belinda Heavner, Rebecca Sullivan, Danny Sullivan, Teresa Blackwell Long, Brian Shaw, Cedric Alston, Tina High, Rich Loskill, L-O-S-K-I-L-L, Rick Ayer, Randy Lack, and Britt Dove.

Are any of you related to by blood or marriage,

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are you friends of, do you have a social relationship with, do you know of any reason why you would tend to believe or disbelieve these particular potential witnesses? And there was no response to that.

MS. WALTER: Someone raised their hand.

MS. ANDREW: Someone raised their hand.

THE COURT: I'm sorry, I did not see you.

JUROR #372: I'm sorry. Randy Lack.

THE COURT: Randy Lack.

JUROR #372: He is an old family friend.

THE COURT: All right. And would you -- could you set the relationship you have with him aside and be a fair and impartial juror?

JUROR #372: Absolutely.

THE COURT: Could you give both the State and the Defense a fair trial?

JUROR #372: Yes, sir.

THE COURT: And I believe you said that he was just a family friend?

JUROR #372: Yes, sir.

THE COURT: All right. Thank you very much. And your number?

JUROR #372: 372.

THE COURT: 372. Thank you, ma'am. All right. Now, I want to talk to you a little bit about the

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attorneys. Seated right down in front of me is Ms. Leigh Andrew, she has the blue jacket on, and Ms. Mary-Ellen Walter with the brown jacket on. These ladies work for the Fifteenth Circuit Solicitor's Office. You in your last elections probably voted for Solicitor Jimmy Richardson. He ran unopposed, that's why I say you probably voted for him.

But Solicitor Richardson is our solicitor. Many places they would refer to that as the DA or the Attorney General. In South Carolina they refer to them as solicitors. He is the solicitor of this circuit, and these ladies have worked for him for some time. And their practice is limited to the prosecution of criminal matters.

Mr. Spirakis is represented by Mr. Ralph Wilson. Mr. Wilson is seated here with the gray jacket on. Mr. Wilson has -- in fact, Mr. Wilson served as solicitor many years ago. He is a private attorney in private practice here in Horry County. And I think he has a general practice. But he is located in Conway; isn't that right?

MR. WILSON SR.: That's correct, Your Honor.

THE COURT: Aren't you still in Conway. He is located here in Conway. Now, is there any one of you who is related by blood or marriage to any of these

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attorneys? Is there any one of you who has a close personal or social relationship with them, you go to church with them, you are in civic clubs with them, you're friends with them? Have you ever been represented by them in the past, are you represented by them in the future? Do you know any reason at all why you would have any bias for or against Mr. Spirakis, for or against the State in this matter, by virtue of your relationship, past or present, with these attorneys? And there was no response to that question.

Now, you have heard me speak generally about the charges in this matter. I think you understand what the charges are generally. Has any one of you formed any opinion about this case? Have you received any information, have you been contacted about this case, have you read anything, seen anything, have any of you formed any preconceptions about the guilt or innocence of this Defendant or about this type of case generally?

Yes, sir. And your name?

JUROR #169: Sir, Tony Jarvis.

THE COURT: All right. And your number?

JUROR #169: 169.

THE COURT: And in response to my question, have you read or heard or --

JUROR #169: I read the news article yesterday.

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THE COURT: Okay.
JUROR #169: Did some research.
THE COURT: All right. Now, would that affect your ability to be fair and impartial in this case?
JUROR #169: Yes, sir.
THE COURT: Have you formed an opinion about this case?
JUROR #169: Yes, sir.
THE COURT: Your name, sir?
JUROR #169: Tony Joseph Jarvis.
THE COURT: I'm going to set you aside, then, and ask that you not respond to any of my further questions. Thank you.
JUROR #346: I would say the same, Your Honor.
THE COURT: All right. And your name, sir?
JUROR #346: Stephen Todd.
THE COURT: Stephen Todd. Well, then, Mr. Todd, let me ask you this. Have you formed an opinion about this case?
JUROR #346: I remember the case when he was arrested for it.
THE COURT: All right. Now, I understand that you may have read something about the case. But have you formed an opinion such that you would not be able to be fair and impartial as a juror?

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JUROR #346: I would say so, yeah.
THE COURT: All right. You could not be?
JUROR #346: I could not be, Your Honor.
THE COURT: All right. Then I'm going to excuse you. And your number, sir?
JUROR #346: 346.
THE COURT: I saw another hand. And, Mr. Todd, you may -- you need not answer my questions further. Yes, sir?
JUROR #171: Same thing.
THE COURT: And your number?
JUROR #171: 171.
THE COURT: 171. And your name?
JUROR #171: Edward Jess.
THE COURT: You could not set aside information that you have received and be fair and impartial in this case?
JUROR #171: No, Your Honor.
THE COURT: All right. Thank you very much. You need not answer my questions. Thank you, sir. I will disqualify you.
All right, anyone else? And there is no further response then to that.
Is any member of this jury panel a member of or contributor to, a part of any group whose primary

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concern is the promotion of law enforcement, victims' rights, things of that nature? Groups like MADD, Mother's Against Drunk Drivers, SADD, Students Against Drunk Drivers, CAVE, Citizens Against Violent Crime; is anyone a member of a citizens crime watch group, anything of that nature? And there was no response to that.

Has any member of this jury panel or a member of your immediate family been accused of a sexual related offense? And there is no response.

MS. WALTER: Your Honor, there is a hand raised in the second row.

THE COURT: Okay. I will not ask you about that, but I would ask you simply this. And would you stand so we can see you. There you go. And your number?

JUROR #147: 147.

THE COURT: Would that affect your ability to be fair and impartial in this case?

JUROR #147: No.

THE COURT: Could you set that aside --

JUROR #147: Yes.

THE COURT: -- and give both the State and the Defense a fair trial?

JUROR #147: Yes.

THE COURT: And your number?

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JUROR #147: 147.
THE COURT: 147. And your name?
JUROR #147: Veda Herman.
THE COURT: Thank you, Ms. Herman. And there is a lady on the -- you may sit, Ms. Herman, thank you.
It was someone in your family had been accused of it?
JUROR #3: Yes.
THE COURT: All right. And that would not affect your ability to be fair and impartial?
JUROR #3: No.
THE COURT: And, again, your number is?
JUROR #3: Three.
THE COURT: Number three?
JUROR #3: Yes, sir.
THE COURT: Okay. I'm sorry, I'm just having a little difficulty hearing you way back there. All right. Thank you, ma'am. Okay.
Does any member of this jury panel believe that if an individual does not immediately report a sexual assault that it never occurred? Did you understand my question?
A JUROR: Would you repeat that again, sir.
THE COURT: Again, does any member of this jury panel believe that if an individual doesn't report a

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sexual assault immediately, that means it didn't occur? And there's no response to that question.

Has any member of this jury panel in the past ever served on a criminal jury, a jury in a criminal court? And would you stand, please, everyone. Okay.

And sir, right here on the front, your name and number?

JUROR #224: Dominic Mclain, 224.

THE COURT: Mr. Mclain, and how long ago was that?

JUROR #224: It was about four years ago.

THE COURT: And was a verdict reached in that case?

JUROR #224: Yes.

THE COURT: All right. And would the fact that you have served previously affect your ability to be fair and impartial in this case?

JUROR #224: It wouldn't affect my ability.

THE COURT: Thank you very much. And the gentlemen in the blue shirt?

JUROR #18: Yes, sir, number 18.

THE COURT: And your name?

JUROR #18: Olin Beaty.

THE COURT: Mr. Beaty?

JUROR #18: Yes, sir.

THE COURT: Mr. Beaty. And how long ago was that?

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JUROR #18: It's probably been five, six years ago.

THE COURT: Okay. And did it go all the way to verdict, was a verdict reached?

JUROR #18: Yes, it did.

THE COURT: And would that affect your ability to be fair in this case?

JUROR #18: No, it wouldn't.

THE COURT: All right. Thank you, sir, I appreciate that. And?

JUROR #160: Yes, 160, Tim Hyman. And about 12 years ago.

THE COURT: All right. And did it go to verdict?

JUROR #160: It did.

THE COURT: And would that affect your ability to be fair in this case?

JUROR #160: No, it would not.

THE COURT: Okay. Thank you very much. And the lady right here with the green?

JUROR #72: Number 72, Stacy Darroch. About 12 years ago.

THE COURT: And did it go all the way to verdict?

JUROR #72: Yes.

THE COURT: And would that affect your ability to be fair on this case?

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JUROR #72: No.
THE COURT: All right. Thank you, ma'am.
JUROR #213: Teresa Mango, 213. About 23 years ago.
THE COURT: And did it go all the way to verdict?
JUROR #213: It sure did.
THE COURT: And could you be fair and impartial in this case?
JUROR #213: Yes, sir.
THE COURT: That would not affect your ability to serve in this?
JUROR #213: No, sir.
THE COURT: Thank you, ma'am. And the gentleman in the white shirt?
JUROR #394: Yeah, Todd Woodard, 394. 30 years ago.
THE COURT: A long time ago?
JUROR #394: Yes, sir.
THE COURT: You must have been about six when you served that on that jury. And did it go all the way to verdict?
JUROR #394: Yes, sir.
THE COURT: And would that affect your ability to be fair in this case?
JUROR #394: No, it would not.

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THE COURT: Thank you very much. And the lady way back in the back?

JUROR #210: Jessica Macbay, juror 210. And it was five years ago.

THE COURT: It was how long ago?

JUROR #210: Five years ago.

THE COURT: And could you be fair and impartial in this case, would it affect your ability to do so?

JUROR #210: I can be fair.

THE COURT: All right. Thank you very much. Has anyone on this jury panel or immediate family member been the victim of a violent crime?

Yes, sir? Right here.

JUROR #33: I'm juror number 33.

THE COURT: All right. Did you have a family member who was a victim of a violent crime?

JUROR #33: Kind of. So my sister when I was a sophomore in college, she suffered a gunshot wound.

THE COURT: Okay. Would that affect your ability to be fair and impartial in this case?

JUROR #33: No.

THE COURT: Could you set that aside?

JUROR #33: (Nodding.)

THE COURT: Your personal experiences?

JUROR #33: Yeah.

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THE COURT: Thank you very much. And your number?
JUROR #33: 33.
THE COURT: 33. All right. Gentleman right here in the front?
JUROR #324: Randall Springer, 324. My wife works at a bank, and she's been held up before.
THE COURT: All right. Would that affect your ability to be fair and impartial in this case?
JUROR #324: No, it would not.
THE COURT: Could you set that aside and give everyone a fair trial?
JUROR #324: Yes, sir, I could.
THE COURT: All right. The lady in, I think it's pink, I can't -- yes, ma'am?
JUROR #317: I'm Dawn Speedy. My juror number is 317.
THE COURT: And was -- do you have a family member who was a victim of a violent crime?
JUROR #317: It was my daughter.
THE COURT: And could you set that aside and be fair and impartial in this trial?
JUROR #317: Because the case was so similar to this, I do not feel that I would be able to set it aside.
THE COURT: All right. Well, give me your number,

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then.

JUROR #317: 317.

THE COURT: 317. And, again, your name?

JUROR #317: Dawn Speedy.

THE COURT: And I'm going to set you aside and ask you not to respond further to my questions.

The gentleman in the checked shirt?

JUROR #202: Yes, sir. I was the victim of a crime when I was employed as a police officer.

THE COURT: All right. And would that affect your ability to be fair and impartial in this matter?

JUROR #202: No, it would not.

THE COURT: Could you give both sides a fair trial?

JUROR #202: Yes, Your Honor.

THE COURT: Thank you very much. And your number?

JUROR #202: 202.

THE COURT: And your name?

JUROR #202: Anthony Lever.

THE COURT: Thank you, sir. And the lady with the sweater?

JUROR #310: Yes. Arika Herspold. My number is 310. My niece was a victim, very similar to this case.

THE COURT: All right. Could you set that aside and be fair and impartial in this case?

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JUROR #310: I don't think so.
THE COURT: All right. Then would you give me your number.
JUROR #310: 310.
THE COURT: Then I will set you aside. Thank you very much. And the lady way back in the back?
JUROR #155: Emmelyn Hood, 155.
THE COURT: 155, okay. Were you a victim or someone in your family?
JUROR #155: Me.
THE COURT: You were. And could you set that aside and be fair and impartial in this case?
JUROR #155: No, sir.
THE COURT: You could not?
JUROR #155: No, sir.
THE COURT: You could not give each side a fair trial, you don't think you could?
JUROR #155: No.
THE COURT: All right. And, again, your name? It was difficult for me to hear.
MS. WALTER: 155, Your Honor.
JUROR #155: 155, Emily.
THE COURT: 155. Thank you very, very much. Okay.
MS. WALTER: Your Honor, there is a young lady in

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the back.

THE COURT: Oh, I'm sorry. I thought I'd covered everyone.

JUROR #145: Yes, my niece is in a similar situation as this.

THE COURT: Would that affect your ability to be fair in this trial?

JUROR #145: Yes, I think it would. I think it would.

THE COURT: You think it would affect your ability?

JUROR #145: Yes.

THE COURT: You don't think you could be a fair and impartial juror?

JUROR #145: I don't think I could.

THE COURT: All right. And your number?

JUROR #145: 145.

THE COURT: 145. All right. Thank you, ma'am.

I believe number eight was just covered. See question number eight on the voir dire, Mr. Wilson? I just asked about violent crimes, and I think that was adequately covered in that.

MR. WILSON SR.: Yes, sir.

THE COURT: Is there any one of you who have been involved in or a member of your immediate family ever

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served in law enforcement? I think we had one gentleman back here. Who else might we have? Yes, ma'am?

JUROR #179: 179, I believe. Susan Kenny.

THE COURT: Ms. Jennings?

JUROR #179: Ms. Kenny, Susan.

THE COURT: Kenny, all right. I'm sorry, Ms. Kenny.

JUROR #179: My father was a detective sergeant my entire life.

THE COURT: And where was he?

JUROR #179: New York.

THE COURT: Where?

JUROR #179: New York.

THE COURT: Okay. And would that affect your ability to be a fair juror?

JUROR #179: No.

THE COURT: Could you set that aside and be fair to both sides?

JUROR #179: Yes, I could.

THE COURT: Thank you very much.

JUROR #179: You're welcome.

THE COURT: And the gentleman in the burgundy shirt there?

JUROR #339: Yes, sir.

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THE COURT: And your name?
JUROR #339: Robert Thomas.
THE COURT: Mr. Thomas. What was your number?
JUROR #339: 339.
THE COURT: And were you in law enforcement or a member of your family?
JUROR #339: Member of my family.
THE COURT: And who was that?
JUROR #339: My cousin and my uncle.
THE COURT: Okay. And would that affect your ability to be fair in this case?
JUROR #339: No, sir.
THE COURT: You could give both sides a fair trial?
JUROR #339: Yes, sir.
THE COURT: Thank you very much. And the lady in the gray there, yes, ma'am?
JUROR #344: My number is 344, Kelly Thornberry. And my father and my uncle are both officers.
THE COURT: And where were they?
JUROR #344: Cincinnati.
THE COURT: Cincinnati, okay. Would that affect your ability to be fair and impartial in this case?
JUROR #344: No.
THE COURT: Could you give both sides a fair

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trial?

JUROR #344: Yes, sir.

THE COURT: Thank you, ma'am. The lady back here on the front with the blue?

JUROR #147: Veda Herman, 147. And my daughter's fiance and my grandson are both police officers.

THE COURT: Are they here or?

JUROR #147: Maryland.

THE COURT: Maryland, okay. And could you set that aside, would it affect your ability to be fair and impartial?

JUROR #147: No, not at all.

THE COURT: All right. Thank you very much. And the lady with the pink?

JUROR #235: Deborah Mitchell, 235. My husband is a retired police officer from Jersey City, New Jersey, and my son is a sergeant.

THE COURT: Okay. So your son and your husband?

JUROR #235: Yes.

THE COURT: Would that affect your ability to be fair in this trial?

JUROR #235: No.

THE COURT: Could you give both sides a fair trial?

JUROR #235: I can.

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THE COURT: Very well. Thank you very much. And Mr. Todd?

JUROR #202: Anthony Lever, retired.

THE COURT: Mr. Lever, okay. And you are retired?

JUROR #202: Yes, sir.

THE COURT: And where were you serving?

JUROR #202: At the police department?

THE COURT: Yes.

JUROR #202: I was a lieutenant over detectives.

THE COURT: In Horry County?

JUROR #202: Yes.

THE COURT: Okay. And would that affect your ability to be fair and impartial in this case?

JUROR #202: No, sir, it would not.

THE COURT: How long have you been out of the department?

JUROR #202: I retired this past November.

THE COURT: All right. And, again, you could be fair and impartial?

JUROR #202: Yes, Your Honor.

THE COURT: Thank you very much. And the lady way back in the back?

JUROR #113: My name is April Ford, my number is 113. I have an uncle that is a sheriff for Horry County. And I can be fair.

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THE COURT: All right. It would not affect your ability to give both sides a fair trial?

JUROR #113: Not at all.

THE COURT: Thank you very much.

MR. WILSON SR.: Her number?

THE COURT: Your number?

JUROR #113: 113.

THE COURT: 113, okay. Does anyone on this jury panel know of any reason why he or she should not serve, with particular emphasis being on your ability to be fair and impartial? Have I failed to ask you something that you feel would be important to know?

Yes, sir?

JUROR #131: Between 2004 and 2008 my wife was employed as a case manager for social services for the State of Maryland. And I feel that that would have an effect on my ability to be fair and impartial.

THE COURT: Did she deal with children and things of that nature?

JUROR #131: Yes, she did.

THE COURT: And you believe that that would affect your ability to be fair?

JUROR #131: Yes, sir.

THE COURT: And your name and number?

JUROR #131: Daniel Gmys, juror 131.

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THE COURT: All right. Thank you for that response. Anyone else?

JUROR #339: Yes, sir.

THE COURT: Yes, sir?

JUROR #339: Number is 339.

THE COURT: Yes, sir.

JUROR #339: My wife is a school counselor, she deals with children.

THE COURT: All right.

JUROR #339: Same issues here presented.

THE COURT: And do you feel that that would make it difficult for you to be fair and impartial in this trial?

JUROR #339: Yes, sir.

THE COURT: And your name and number?

JUROR #339: Robert Thomas, 339.

THE COURT: All right. Thank you.

All right. Anything further, Mr. Wilson?

MR. WILSON SR.: Nothing further, Your Honor.

THE COURT: Anything further, Ms. Walker, Ms. Andrew?

MS. ANDREW: Nothing further, Your Honor.

THE COURT: Very well. Madam clerk, would you give us a juror.

THE CLERK: The lady sitting right here, can I get

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your juror name and number.

JUROR #145: It's 145 and Kathy Heffernan.

THE COURT: Okay. All right. Now, as your name is called, please just come right up here where Mr. Ropp is, turn around and face the jurors. And if you have any personal effects with you, bring them, that would -- because if you get seated on the jury, that way you don't have to go back to your seat and get your things.

Jade, would you put my jury facing me on those first seats there. Yes, thank you.

All right strikes are five and ten, I believe; is that correct?

MS. ANDREW: That's correct.

MS. WALTER: Yes, Your Honor.

THE COURT: Okay.

THE CLERK: Juror number 75, Donald Day. What say the State?

MS. ANDREW: Please strike this juror.

THE CLERK: You're excused from this particular case.

THE COURT: You may return to your seat, Mr. Day.

THE CLERK: Juror number 386, Bennie Wilson. What say the State?

MS. ANDREW: Please present this juror.

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THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.
THE CLERK: Please be seated over on the right-hand side. Juror number 287, Kurt Rothenberg. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.
THE CLERK: Please be seated on the right. Juror number 147, Veda Herman. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Please excuse this juror from the trial of this case.
THE CLERK: You're excused from this particular case. 400, Betty Zusin. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Excuse the juror from the trial of this particular case.
THE CLERK: You're excused from this particular case. 172, Ralph Johnson. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.

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THE CLERK: Please be seated on the right. 121, Loredana Garman. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Please excuse the juror from this particular case.

THE CLERK: You're excused from this particular case. 185, Phyllis Knauff. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: What number, madam clerk?

THE CLERK: 185.

MR. WILSON SR.: Excuse the juror from the trial of this case.

THE CLERK: You're excused from this particular case.

THE COURT: 65, Jill Cox. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

THE CLERK: Please be seated on the right. 150, Shirley Herring. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

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THE CLERK: Please be seated on the right.
THE COURT: 311, Laura Smith. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.
THE CLERK: Please be seated on the right. 14, Austin Barnhill. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.
THE CLERK: Please be seated on the right. 240, Ashley Morrison. What say the State?
MS. ANDREW: Please strike this juror.
THE CLERK: You're excused from this particular case. 18, Olin Beaty. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.
THE CLERK: Please be seated on the right. 195, Kristaine Lane. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Please excuse the juror from the trial of this particular case.
THE CLERK: You're excused from this particular

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case. Three, Mindy Allen. What say the State?
MS. ANDREW: Please strike this juror.
THE CLERK: You're excused from this particular case. 173, Thomas Johnson. What say the State?
MS. ANDREW: Please seat this juror.
THE CLERK: Defense?
MR. WILSON SR.: Please excuse this juror from the particular case.
THE CLERK: You're excused from this particular case. 184, Rina Klein. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Please excuse the juror from the trial of this particular case.
THE CLERK: You're excused from this particular case. 284, William Rogers. What say the State?
MS. ANDREW: Please seat this juror.
THE CLERK: Defense?
MR. WILSON SR.: Please excuse the juror from the trial of this case.
THE CLERK: You're excused from this particular case. Ten, Shellene Ayers. What say the State?
MS. ANDREW: Please present this juror.
THE CLERK: Defense?
MR. WILSON SR.: Seat the juror.

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THE CLERK: Please have a seat on the side. 159, Michaela Hufford. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

THE CLERK: Please be seated on the right. 224, Dominic Mclain. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Please excuse the juror from the trial of this case.

THE CLERK: You're excused from this particular case. 374, Leslie Wdowiak. What say the State?

MS. ANDREW: Please present the juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

THE CLERK: Please be seated on the right. 394, Todd Woodard. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

THE CLERK: Please be seated on the right.

THE COURT: All right. I think that's 12; isn't it? All right. I'm going to select two alternates. I will give you each one strike each on each alternate.

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Understand, Mr. Wilson?

MR. WILSON SR.: Yes, sir.

THE COURT: Ms. Andrew? Okay.

MS. ANDREW: Yes, sir.

THE COURT: Madam clerk?

THE CLERK: Juror number 210, Jessica Mcbay. What say the State?

MS. ANDREW: Please present this juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

THE CLERK: Please be seated on the right. 180, Trey King. What say the State?

MS. ANDREW: Please present the juror.

THE CLERK: Defense?

MR. WILSON SR.: Seat the juror.

THE CLERK: Please be seated on the right.

THE COURT: All right, very well. Counsel -- well, Mr. Wilson, will there be a challenge to the jury panel?

MR. WILSON SR.: No, sir.

THE COURT: Very well. Mr. Wilson?

MR. WILSON SR.: Yes, sir.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

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THE COURT: Okay. We have our jury panel. The rest of you are excused for today. Thank you. You may be excused for the week. I would ask you to call back the number that you were provided, call back after 6 o'clock this evening. As I said, I don't -- I anticipate having a message there that you don't have to call back again. But we never know.

So give us a call after six, and there will be instructions for you. Thank you very much. Before you leave, Mr. Ropp --

A JUROR: The rest of the week?

THE COURT: No, no. Call back this afternoon. Call back this afternoon, and I will tell you on that recording as to whether or not.

A JUROR: Oh, okay.

THE COURT: Thank you. Mr. Ropp, would you take this jury up to the jury room, let them refresh themselves. I want you to put Mr. Beaty in the foreman's seat.

(Discussion off the record.)

THE COURT: All right. Let Mr. Ropp get the jury out and up the hall, and then I'll excuse you. Okay. Thank you very much.

(WHEREUPON, a brief recess was taken at approximately 10:41 a.m.)

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THE COURT: All right, thank you very much. Please keep your seats.

(Discussion off the record.)

THE COURT: Okay. Bobby got the jury in the jury room?

MR. WILSON SR.: Before you bring them out, I got another issue.

THE COURT: All right.

MR. WILSON SR.: Well, after you had finished your voir dire and selection of the jury --

THE COURT: All right.

MR. WILSON SR.: -- one of the jurors walked past my table.

THE COURT: One of my jurors?

MR. WILSON SR.: No, sir. One of the panel that you released.

THE COURT: All right.

MR. WILSON SR.: Walked past the table, and he said -- I don't know if he was talking to me or he was talking to the Defendant, but he said, what his words were which is what concerns me, "I hope you rot in hell you piece of shit."

THE COURT: Well...

MR. WILSON SR.: Well, and my concern for that is, you know, and it's not like I haven't -- that hadn't

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been said to me before so it doesn't alarm me much. But if he is saying that about the Defendant, which is what my concern is, then I don't know what he has said to the panel while he was siting there if he was brazen enough to say that in my presence to the Defendant.

And so I want -- I'm asking the Court to look into it, one, to talk to him and find out who else he expressed those sentiments to about the Defendant if in fact they were about the Defendant --

THE COURT: Well --

MR. WILSON SR.: -- and, two, I would ask the Court to inquire of the panel if he has said anything to them regarding his feelings about this Defendant or this case.

THE COURT: Well, wouldn't that even make it worse, Mr. Wilson? Once that panel is released -- I think that I did everything the Court can do to make sure that no one had any bias against this Defendant. And, again, I even asked you if anything else needed to be done. My final question was, do you know any reason whatsoever why you might have any bias against the State or Defense. I think we covered that.

I believe if we start talking to the jury in terms of did another juror tell you that they thought the Defendant or Mr. Wilson was a POS or whatever, that

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might be harmful. I would ask them if any other juror has expressed any bias to them.

MR. WILSON SR.: Yes, sir.

THE COURT: Okay. And just leave it like that for or against the State or the Defense.

MR. WILSON SR.: Well, could we at least ask this individual, one, I'm concerned --

THE COURT: Well, where is this individual?

MR. WILSON SR.: In the little room right there outside, the juror, he's seated outside.

THE COURT: Well, I don't have any objections to that, okay. I just don't want to put anything like that in this jury's mind, if you understand where I'm going.

MR. WILSON SR.: Yes, sir, which is what my concern is. I don't want it to be in their minds. I mean, it's bad enough. I mean, we're fighting an uphill battle here in the first instance.

THE COURT: I just don't want to suggest to them that someone would have that kind of bias or whatever that could possibly be on this jury or a fellow juror. I just don't want to try to convey that sentiment to this jury or to even suggest that it exists.

You know, I've tried to make sure this jury understands that we need a fair, impartial, unbiased

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jury. And I just think that -- and I think we've covered that. I just don't want to now suggest that or -- to the jury. I think it would be harmful from the Defense's standpoint to do something like that.

Now, I don't mind bringing in this other juror and asking, did you talk to any other juror or express this to any other jurors who are sitting on this panel. You know, I'll be happy to do that. And if it needs further inquiry, well, maybe we can go further.

But right now, I mean, do you really want me to -- I mean, I could ask the jury in general terms, I said, I want to ask you one more time, has anyone contacted you about this case, said anything about this case that would in any way affect your ability to be fair and impartial in this matter.

MR. WILSON SR.: Yes, sir. I think --

THE COURT: I just don't want to get specific.

MR. WILSON SR.: I understand. And I agree with you, I don't want you to ask specifically, did anybody say that Ralph Wilson or Spirakis is a -- should go to whatever. I don't want that, that's not what I want. What I do want is for the Court to inquire of this juror if he has made contact with other jurors during the course of this week and have said derogatory things to them about this case, either about this Defendant or

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about me, for that matter, to other members of the jury panel.

THE COURT: Well, I'll ask him that. But as far as my inquiring to this jury that is seated, I want to be very cautious.

MR. WILSON SR.: Absolutely. And I understand that. I understand that.

THE COURT: Well, bring him in then. Is he out there, Tony, do you have him?

THE DEPUTY: No, sir. He's gone.

THE COURT: He's gone.

MR. WILSON SR.: Then, Your Honor, you know, and I specifically asked the bailiffs when he made the statement to me to stop him until I could get to make this motion.

THE COURT: Well, we don't have him. I don't even know who he is.

MR. WILSON SR.: Well, and I don't know who he is, I know him if I see him. I don't know his name. I mean, he was the bald head tall gentleman -- in fact, he was the first one that stood up to say that he could not serve on this case.

THE COURT: Well, all I can do, then, is make an inquiry to this jury directly. And I think that's the best inquiry, has anyone contacted you or made any

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derogatory remarks to you that would in any way cause you to have any bias or prejudice for or against the State or for or against the Defendant. I mean, isn't that what we're looking for?

MR. WILSON SR.: Yes, sir, that is one of the things that I'm looking for. But the other thing that I am looking for is that -- that juror -- I'm requesting that that juror be brought in and he be questioned in this case about what he said, what he meant and who else he has expressed those sentiments to.

And I think that's important, Your Honor, because I don't know what he's done. All I know what he said to me. And I know that if he's brazen enough to have said that to me seated at counsel table in the courtroom --

THE COURT: Mr. Wilson, I'll deal with what I've got. I got a jury here. And I will make an inquiry of the jury. I don't have him, but I will make an inquiry as to the jury. And I think that's the -- I don't care who else he may have talked to, as long as he didn't influence this jury, any member of this jury panel.

MR. WILSON SR.: I mean, I understand your ruling, and obviously I accept that. Would you bear with me just one second.

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THE COURT: All right. Let's bring the jury in.
MS. ANDREW: Your Honor?
THE COURT: Yes.
MS. ANDREW: I'm sorry. We would like to make sure we plead Ms. Honeycutt guilty before the jury.
THE COURT: Oh, I'm sorry, okay. I forgot that we were doing that this morning, I'm sorry. Yes, we were, okay. Is she up here?
MS. ANDREW: She's out in the hallway.
THE COURT: Okay. Well, let's get her. Are we going to defer sentencing?
MS. ANDREW: Yes, sir, until we've had a chance to try both defendants. And Mr. Ralph Wilson Jr. has made a motion to be relieved from Edward Heavner. He made it this morning after speaking to the bar yesterday.
THE COURT: Well, I'm not going to address that today.
MS. ANDREW: I was just telling you because, you know --
(Discussion off the record.)
THE COURT: What are the ranges on the charges that she is pleading to?
MS. ANDREW: Assault and battery of a high and aggravated nature is zero to 20. Unlawful conduct toward a child is zero to ten.

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THE COURT: Okay.

MS. ANDREW: And two counts of each, one for each child.

THE COURT: Okay.

LINDSEY HONEYCUTT, after being duly sworn, testified as follows:

(Discussion off the record.)

MS. ANDREW: May it please the Court, Your Honor, this is State of South Carolina, County of Horry versus Lindsey Danielle Honeycutt. She's charged in true billed indictment 2016-GS-26-04801 for criminal sexual conduct with a minor in the first degree. She is here today to plead guilty to assault and battery of a high and aggravated nature which is a lesser included charges of criminal sexual conduct, two counts.

Also for indictment ending in 04802, one for each child victim. She's also pleading guilty to waiver of indictment 2018-GS-26-05094 and 05093, which is unlawful conduct toward a child, one count for each victim. She's present in court with her attorney, Mr. James Galmore.

THE COURT: All right, very well. Ms. Honeycutt, you are here today with your attorney, Mr. Galmore; is that correct?

MS. HONEYCUTT: Yes, sir.

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THE COURT: And has Mr. Galmore explained the nature of your charges or the charges to which you are pleading, that being unlawful conduct towards a child, two counts, and assault and battery of a high and aggravated nature, two counts.

MS. HONEYCUTT: Yes, sir.

THE COURT: Do you understand those charges? Do you need to ask me anything about those charges, what constitutes those charges?

MS. HONEYCUTT: No, sir.

THE COURT: All right. Do you understand that the two charges or the two counts of unlawful conduct towards a child have not been presented to the grand jury for indictment; do you understand that?

MS. HONEYCUTT: Yes, sir.

THE COURT: You've indicated on your sentencing sheet that you wish to waive that process. Have you discussed that with Mr. Galmore?

MS. HONEYCUTT: Yes, sir.

THE COURT: And is that what you wish to do, waive presentment of those two charges?

MS. HONEYCUTT: Yes, sir.

THE COURT: All right. Now, Ms. Honeycutt, have you had an opportunity to discuss with Mr. Galmore the discovery materials, the evidence in this case?

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MS. HONEYCUTT: Yes, sir.

THE COURT: And has he during your discussions talked with you about the possibility or the availability of a jury trial?

MS. HONEYCUTT: Yes, sir.

THE COURT: Do you understand what a jury trial is?

MS. HONEYCUTT: Yes, sir.

THE COURT: Do you understand, Ms. Honeycutt, that you have an absolute right to be tried by a jury on any or all of these charges?

MS. HONEYCUTT: Yes, sir.

THE COURT: And by that, I mean that you could be tried on one and you could enter a plea to another, any combination, but you have an absolute right to be tried by a jury on each charge; do you understand that?

MS. HONEYCUTT: Yes, sir.

THE COURT: Has Mr. Galmore informed you that the charge of unlawful conduct toward a child carries a potential penalty of up to ten years.

MS. HONEYCUTT: Yes, sir.

THE COURT: And has he advised you that the assault and battery of a high and aggravated nature charge carries up to 20 years, each count; do you understand that?

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MS. HONEYCUTT: Yes, sir.

THE COURT: Now, in your conversations with Mr. Galmore, did he explain to you that your absolute right to a jury trial means that you do not have to plead guilty to anything?

MS. HONEYCUTT: Yes, sir.

THE COURT: Do you understand that?

MS. HONEYCUTT: Um-hum.

THE COURT: Now, if you choose to plead guilty to any of these charges, Ms. Honeycutt, do you understand that that will involve not only a waiver of your right to a jury trial, but the many collateral rights that are associated with a jury trial, those being things like your Fifth Amendment right, your right to remain silent. I'm sure you've heard of that. The right to remain silent is generally associated with the person's right not to speak to police officers when you're arrested. But it carries over to a jury trial.

In a jury trial you would not have to speak, you would not have to testify, no one could make you do that. Certainly you could if you wanted to, but no one could make you. And if you chose not to, I would advise the jury that they could not use that in any way against you during their deliberation process.

Also, you have a Sixth Amendment right to have an

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attorney. Now, you have Mr. Galmore, of course, with you here today. But if you had a jury trial, Mr. Galmore's duties, responsibilities, opportunities would be quite different from what they are during a plea.

In a trial, Mr. Galmore would have the opportunity to challenge every witness that the State puts up against you, challenge all the evidence that the State has against you. He would have the right also to put up evidence, witnesses that may be helpful to you if you had any. But if you plead guilty, you waive your jury trial, you waive that opportunity. Do you understand?

MS. HONEYCUTT: Yes, sir.

THE COURT: Okay. Also, in a jury trial, and I think this is most important, the State must produce sufficient evidence to convince all 12 jurors of your guilt beyond a reasonable doubt before there could be a conviction; do you understand that?

MS. HONEYCUTT: Yes, sir.

THE COURT: And I would inform them that each indictment or each charge would require a separate independent verdict; do you understand that as well?

MS. HONEYCUTT: Yes, sir.

THE COURT: There are many rights that are similar

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to the ones that I have just described to you. There are so many rights I think Mr. Galmore would agree that if we spent the next month talking with you we could probably not cover them all; could we, Mr. Galmore?

MR. GALMORE: Yes, sir, that's correct.

THE COURT: All right. But I want you to understand that I point these out to you just by way of illustration. I want you to understand that there are many rights that you waive when you give up your right to a jury trial; do you understand?

MS. HONEYCUTT: Yes, sir.

THE COURT: And is that what you wish to do?

MS. HONEYCUTT: Yes, sir.

THE COURT: Now, tell me about Mr. Galmore. Are you satisfied with Mr. Galmore's representation?

MS. HONEYCUTT: Yes, sir, I am.

THE COURT: Do you understand the things that he has told you?

MS. HONEYCUTT: Yes, sir.

THE COURT: Do you need any more time to discuss this case with Mr. Galmore?

MS. HONEYCUTT: No, sir.

THE COURT: Has he met your expectations?

MS. HONEYCUTT: Yes, sir.

THE COURT: Is there anything else you want him to

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do for you?

MS. HONEYCUTT: No, sir.

THE COURT: I cannot give you legal advice, but I am more than happy to explain to you anything that you may question about this procedure that we're following. Do you have any questions for me?

MS. HONEYCUTT: No, sir.

THE COURT: Okay. Are you clear as to what we're doing here today?

MS. HONEYCUTT: Yes, sir.

THE COURT: All right. Ms. Honeycutt, I look at your sentencing sheet and I see that you are 31 years of age; is that correct?

MS. HONEYCUTT: Yes, sir.

THE COURT: Are you married, Ms. Honeycutt?

MS. HONEYCUTT: No, sir.

THE COURT: Now, Ms. Honeycutt, it's my understanding from what I have heard in preparation for a trial of your codefendant that you do have children; is that right?

MS. HONEYCUTT: Yes, sir.

THE COURT: How many children do you have?

MS. HONEYCUTT: Four.

THE COURT: Four. And you no longer have those children in your custody?

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MS. HONEYCUTT: I have two. Me and my mom have joint custody.

THE COURT: Okay, all right. Ms. Honeycutt, what's your educational level?

MS. HONEYCUTT: 12 and four months of college.

THE COURT: Okay. And what do you do for or have you done for a living, Ms. Honeycutt, what's your work history?

MS. HONEYCUTT: Right now I'm a waitress, but in the past I've done everything from dancing to bartending.

THE COURT: Okay.

MS. HONEYCUTT: Clean rooms.

THE COURT: Okay. Ms. Honeycutt, have you ever had any mental health issues, addiction issues, anything of that nature, that might prevent you from understanding what we're doing here today?

MS. HONEYCUTT: I've had both issues, but I understand what we're doing here today.

THE COURT: Okay. They would not affect you today?

MS. HONEYCUTT: No, sir.

THE COURT: You do understand?

MS. HONEYCUTT: Yes, sir.

THE COURT: Okay. Have you consumed anything of

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an intoxicating nature in the last 48 hours, drugs, alcohol, anything of that nature?

MS. HONEYCUTT: No, sir.

THE COURT: Okay. Do you know of any reason whatsoever why you would not fully and completely understand what we're doing here today?

MS. HONEYCUTT: No, sir.

THE COURT: All right. Now, Ms. Honeycutt, I want you to listen very carefully, Ms. Andrew is going to tell me why you're charged under these indictments.

MS. ANDREW: Your Honor, between the dates of December 1st, 2014 and April 30th, 2015, while within the confines of Horry County, the Defendant Lindsay Honeycutt in concert with Pete Spirakis and Ambrose Edward Heavner committed a sexual battery on the person of her two minor children, Sister [redacted] and Brother [redacted]. She also allowed other adults to touch and molest those two children, which is the basis for the unlawful conduct charge.

THE COURT: Okay. And what about the assault charge, I mean?

MS. ANDREW: The assault charge is the first part where she engaged in --

THE COURT: Okay.

MS. ANDREW: -- in a touching of their private

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parts using digital penetration and toys. Ms. Honeycutt has agreed to testify on behalf of the State in the trials of Mr. Pete Spirakis, Ambrose Edward Heavner and potentially Anthony Strickland in exchange for this plea to these charges. We just ask that the Court hold sentence in abeyance until after we can complete those trials.

THE COURT: All right. Ms. Honeycutt, you've heard the State explain to me the basis of the charge. Do you -- or are those allegations correct?

MS. HONEYCUTT: Yes, sir.

THE COURT: And is that why you are pleading guilty to these charges?

MS. HONEYCUTT: Yes, sir.

THE COURT: Has anybody promised you anything, threatened you in any way, has anyone done anything inappropriate or improper to make you feel as though you had to enter this plea?

MS. HONEYCUTT: No, sir.

THE COURT: Are you entering these pleas freely and voluntarily?

MS. HONEYCUTT: Yes, sir.

THE COURT: Have you had sufficient time to discuss it with your attorney?

MS. HONEYCUTT: Yes, sir.

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THE COURT: Do you need to discuss it with anyone else, family, friends, anyone who may give you sound advice?

MS. HONEYCUTT: No, sir.

THE COURT: All right. Have you been truthful with me in your responses, Ms. Honeycutt?

MS. HONEYCUTT: Yes, sir.

THE COURT: Do you believe that this plea is in -- or these pleas are in your best interest and a resolution of these cases that serves you best?

MS. HONEYCUTT: Yes, sir.

THE COURT: All right. And are you asking me to accept your plea?

MS. HONEYCUTT: Yes, sir.

THE COURT: All right. I find that there is a substantial factual basis for the plea, that the plea is made freely, voluntarily, knowingly and intelligently after the advice of a very competent attorney with whom Ms. Honeycutt says she is satisfied, and I will accept these pleas.

Now, let me tell you, Ms. Honeycutt, usually the time to appeal begins to run after sentencing. I'm holding your sentencing in abeyance, but I want to make sure that you are aware of your right to appeal. You may appeal what I do here today, but only if you file a

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notice of intent to appeal within ten days of my sentencing. Failure to do so would be a waiver of your right to appeal.

Now, I'm sure that you probably don't know what a notice of intent to appeal is, you probably don't know where a person would file that. However, Mr. Galmore is very familiar with that procedure, and Mr. Galmore is obligated should you choose to appeal my ruling to assist you in getting that filed. And you will do so; won't you, Mr. Galmore?

MR. GALMORE: Yes, sir.

THE COURT: Thereafter, if you can not afford an appellate attorney, one would be appointed to assist you without cost to you. Do you understand what I've told you?

MS. HONEYCUTT: Yes, sir.

THE COURT: Very well. Thank you very much.

MR. GALMORE: Thank you, sir.

(Discussion off the record.)

THE COURT: All right. Counsel has asked for a conference.

(WHEREUPON, a brief recess was taken at approximately 11:23 a.m.)

THE COURT: Just keep your seats, keep your seats.

(Discussion off the record.)

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THE COURT: Let the record reflect everyone is here now.

THE CLERK: Please stand and raise your right hand.

PANTELEIMON N. SPIRAKIS, after being duly sworn, testified as follows:

THE CLERK: Thank you.

THE COURT: You may sit. Yes, ma'am.

MS. ANDREW: May it please the Court, Your Honor. This is State of South Carolina, County of Horry versus -- speak the name for me.

MR. WILSON SR.: Panteleimon.

MS. ANDREW: Panteleimon N. Spirakis. It's true billed indictment 2016-GS-26-04790, for criminal sexual conduct with a minor in the first degree; for true billed indictment ending in 04791, criminal sexual conduct with a minor in the first degree; for true billed indictment ending in 04788, engaging a child for a sexual performance; true billed indictment ending in 04789, engaging a child for a sexual performance; and true billed indictment ending in 04786, sexual exploitation of a minor in the first degree.

The Defendant's present with his attorney, Mr. Ralph Wilson. He is pleading guilty with no agreement or recommendation from the State, Your Honor.

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THE COURT: All right, very well. Thank you. May I have the sentencing sheets, please.

MS. ANDREW: Yes, sir.

THE COURT: Thank you. All right. Mr. Spirakis, would you stand, please. Mr. Spirakis, it's my understanding that you're here with your attorney today before me for the purpose of entering a plea to these charges; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Spirakis, have you had ample opportunity to discuss the nature of these charges, that is what constitutes these charges, with Mr. Wilson?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions for me concerning the nature of the charges?

THE DEFENDANT: No, sir.

THE COURT: All right. Mr. Spirakis, in your conversations with Mr. Wilson, did Mr. Wilson advise you that the offense of criminal sexual conduct with a minor in the first degree carries a potential sentence of 10 to 30 years?

THE DEFENDANT: Yes, sir.

THE COURT: Did he advise you that engaging a child for sexual performance carries a potential

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sentence for zero to 20 years?

THE DEFENDANT: Yes, sir.

THE COURT: And did he advise you that the offense of sexual exploitation of a minor in the first degree carries a potential penalty of a minimum of three up to 20 years and that that must be made consecutive to any other sentence; you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. So you know or understand the potential penalties in this case?

THE DEFENDANT: Yes, sir.

THE COURT: You need to speak up, Mr. Spirakis, because Ms. Bautz here has to record your responses. I would ask you to please do that.

Mr. Spirakis, in your conversations with Mr. Wilson, did he have an opportunity to go over the evidence that the State has provided in this matter?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Has Mr. Wilson discussed with you the possibility of having a jury trial in this matter?

THE DEFENDANT: Yes, sir.

THE COURT: Generally speaking, do you understand

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what a jury trial is?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions for me concerning that?

THE DEFENDANT: No, sir.

THE COURT: Do you understand, Mr. Spirakis, that if you had a jury trial, any number of things could result. You could be acquitted; that is, the State would fail in its duty to convince all 12 jurors of your guilt beyond a reasonable doubt. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You could be convicted of all charges; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Or you could be convicted of some and acquitted on others; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you realize, Mr. Spirakis, that your right to a jury trial on any of these charges is absolute, that means that you could have a jury trial on all of them or one of them or two of them or any combination; you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Do you realize, Mr. Spirakis,

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that by pleading guilty you forfeit, you give up, you waive, that very important right to a jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: When you do so, you give up many, many other important rights that are collateral to, that is, they go along with, they are associated with a jury trial. Some of those rights which I like to point out to you just by way of illustration are things like your Fifth Amendment right. That's often referred to as your right to remain silent. I'm sure you've heard of that.

THE DEFENDANT: Yes, sir.

THE COURT: Most people associate that with an arrest; that is, they associate it with their right to not speak to police officers when they're arrested. But it also carries over to a trial. It means that in a trial, no would could require you to testify. You could choose to remain silent. Of course, you could testify if you chose to.

But if you chose to remain silent, I would tell the jury that they could not use that in any form or fashion against you; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Also, in a jury trial you would have a Sixth Amendment right, that's your right to counsel.

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You have obviously a very fine attorney with you today in Mr. Wilson.

However, if you had a jury trial, Mr. Wilson's obligations, his opportunities, would be quite different from what they are in a plea. In a jury trial, Mr. Wilson would have the opportunity and the obligation to challenge all of the State's witnesses, all of the State's evidence against you; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: He could also put up witnesses or evidence that might be helpful to you if you had any; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you realize or do you understand, Mr. Spirakis, that in a jury trial, I would tell the jury that they could not convict you of anything unless the State had convinced each and every one of them of your guilt beyond a reasonable doubt; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you also understand that I would advise them that they had to return or would need to return a separate verdict for each indictment independent of how they may have found as to the other

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indictments; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Now, Mr. Spirakis, do you wish to enter a plea and waive your rights in this matter?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Spirakis, I want you to talk to me about Mr. Wilson. How long has Mr. Wilson represented you?

THE DEFENDANT: Probably for 15 years, 12.

THE COURT: On this particular charge; since its inception?

THE DEFENDANT: Since its inception.

THE COURT: And have you had ample opportunity to discuss your case with him?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions for him today?

THE DEFENDANT: No, sir.

THE COURT: Do you need for him to do anything else for you that you're aware of?

THE DEFENDANT: No, sir.

THE COURT: Are you satisfied with his representation?

THE DEFENDANT: Yes, sir.

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THE COURT: Has he met your expectations?
THE DEFENDANT: Yes, sir.
THE COURT: Now, Mr. Spirakis, I cannot give you legal advice, but I would be happy to answer any questions you might have about this procedure, this process that we're going through. Do you have any questions for me?
THE DEFENDANT: No, sir.
THE COURT: All right. Now, Mr. Spirakis, I look at your sentencing sheet and I see, are you 57 now?
THE DEFENDANT: Yes, sir. I'll be 58 November 9th.
THE COURT: Okay. So you're essentially 58 years old; is that right?
THE DEFENDANT: Yes, sir.
THE COURT: And, Mr. Spirakis, you are from Myrtle Beach?
THE DEFENDANT: Yes, sir.
THE COURT: Are you a life long resident here?
THE DEFENDANT: Yes, sir.
THE COURT: What sort of work have you engaged in, Mr. Spirakis?
THE DEFENDANT: I've been in restaurant business in the last probably since 19 -- since 2002, locksmith company.

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THE COURT: All right. Mr. Spirakis, what is your educational...

THE DEFENDANT: I have a bachelor of science degree in business administration.

THE COURT: All right, sir. Are you married, Mr. Spirakis?

THE DEFENDANT: No, sir.

THE COURT: Do you have children?

THE DEFENDANT: No, sir.

THE COURT: Mr. Spirakis, have you ever had a mental health problem or an addiction issue, anything of that nature, that might adversely affect your ability to understand what we're doing here today?

THE DEFENDANT: No, sir.

THE COURT: Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Again, do you have any questions for me or for Mr. Wilson?

THE DEFENDANT: No, sir.

THE COURT: Mr. Spirakis, in the last 24 hours, have you taken any type of intoxicating substance, drugs, alcohol, anything like that?

THE DEFENDANT: No, sir.

THE COURT: Okay. Do you know of any reason whatsoever why you would not understand what we're

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doing here today and appreciate your actions --

THE DEFENDANT: No, sir.

THE COURT: -- the consequences of your actions; you do understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Now, Mr. Spirakis, I'm going to ask you to listen to Ms. Andrew. She is going to tell me why you were charged with this offense.

MS. ANDREW: Your Honor, on or between the dates of December 1st, 2014 and April 30th, 2015, while in the confines of Horry County, South Carolina, the Defendant Spirakis assaulted two twin children who were then between the ages of four and five years old.

The victim's biological parents participated in the abuse and made them available to the Defendant to assault in exchange for drugs and money. Defendant assaulted the SISTER victim by penetrating her vagina and anus with objects and body parts.

He assaulted Brother by penetrating his anus with objects and body parts. The assaults of both victims occurred at the Defendant's house and at the dance club. The child victims were sometimes present while the other was being sexually assaulted, and the children were made to perform sex acts on each other and with other adults. The Defendant also sometimes

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video -- audio recorded the children and photographed them engaging in sex acts.

THE COURT: All right. Mr. Spirakis, is that what occurred?

THE DEFENDANT: Yes, sir.

THE COURT: And is that why you are entering your pleas to these five indictments?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Spirakis, has anyone promised you anything, threatened you in any way, done anything inappropriate to make you feel like you have to do this?

THE DEFENDANT: No, sir.

THE COURT: Is anyone forcing you to waive your right to a jury trial in these matters?

THE DEFENDANT: No, sir.

THE COURT: Have you had ample opportunity to consider this plea, to think about it?

THE DEFENDANT: Yes, sir.

THE COURT: Again, do you need any more time to discuss it with Mr. Wilson, family, friends, anyone who may give you sound advice?

THE DEFENDANT: No, sir.

THE COURT: All right. Have you been truthful with me in your responses, Mr. Spirakis?

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THE DEFENDANT: Yes, sir.

THE COURT: Mr. Spirakis, are you entering this plea freely and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Now, Mr. Spirakis, let me advise you that you have a right to appeal what I do here today. Your right to appeal, though, is conditioned upon your filing a notice of intent to appeal within ten days. If you fail to file a notice of intent to appeal within ten days, you have waived your right to appeal.

I'm sure you don't know how or where to do that. However, Mr. Wilson is familiar with that procedure, and he is obligated and willing to do that for you should you choose to appeal it. Isn't that correct, Mr. Wilson?

MR. WILSON SR.: Yes, sir, Your Honor.

THE COURT: Thereafter, if you could not afford an appellate attorney, one would be appointed for you at no cost; do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I find that there is a substantial factual basis for the plea, and it's made freely, voluntarily, knowingly and intelligently after the advice of a very competent attorney with whom he

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says he's satisfied, and I will accept his plea.

Yes, ma'am?

MS. ANDREW: Your Honor, I should have said this with the recitation of the facts. But one of the elements of the crime is that Mr. Spirakis is currently a registered sex offender.

THE COURT: Okay, I understand. All right. Now, I'll hear from the State.

MS. ANDREW: Your Honor, the victims' grandmother and the State would like to make a brief statement on their behalf.

THE COURT: Very well.

MS. ANDREW: Okay.

THE COURT: Yes, ma'am?

MS. EDWARDS: I simply want to say that the damage to my grandchildren is extensive.

THE COURT: Would you place your name on the record, please.

MS. EDWARDS: Oh, I'm sorry. Melinda Edwards.

THE COURT: Yes, ma'am.

MS. EDWARDS: And I just wanted to say that the damage to my grandchildren is very extensive. They've been in extreme counselling and for three and a half years, and it is ongoing. And I would just like to say that I would like to see this man locked up for the

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balance of his natural life so that he cannot harm other children like he harmed my grandchildren.

THE COURT: It's my understanding that your grandchildren are now eight years of age?

MS. EDWARDS: Yes, sir.

THE COURT: And I will tell you that I certainly appreciate and understand the damage that this may have caused your children. But I am also relieved that this case has resolved itself by plea, as are the solicitors, I'm sure. These are eight-year-old children. I was not looking forward to having them go through this trial, I can assure you that. I think it would have damaged them further.

MS. EDWARDS: Yes, sir.

THE COURT: All right. Thank you, ma'am, for those comments. All right.

MS. ANDREW: Your Honor, as she said, the State, we've spent some time with these children, and we're asking you to give them justice. The crimes that this Defendant perpetrated against these children are some of the worst crimes that I can imagine. He robbed them of an innocence that they will never get back, and they will live with the scars of this the rest of their life.

I do join you in your sentiment that not having

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them have to come in and testify is of great benefit to them. But I do ask you to impose an appropriate sentence on this Defendant, especially considering his record as a sex offender.

THE COURT: Thank you, Ms. Andrew. And, of course, I retained jurisdiction on this case two years ago.

MS. ANDREW: Yes, sir.

THE COURT: And -- or I think it's a little better than two years, maybe three on this. And I appreciate the work that you and the solicitor's office has done as well as Mr. Wilson. We have had many conferences concerning this matter, and I assure you that I understand the facts and I understand the circumstances of this case and the problems with this case. And, again, I appreciate your efforts and Mr. Wilson's efforts. Thank you.

Mr. Wilson, I'll hear from you.

MR. WILSON SR.: Please the Court, Your Honor, let me say this, and I think the most important thing that we've done here today is we've saved these kids from having to come back and go get on that witness stand and relive the horrors that were inflicted upon them by their family and by my client, whoever it was that did these horrible things to them. And all of them haven't

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yet been brought to justice, and I'm sure that they will be.

And I think that that shows a great deal of decency in Peter having been willing to stand up and say, I'm pleading guilty. And one of the reasons I'm pleading guilty is because I do not want to do that.

Having watched that video yesterday, and I think that that had an impact with him. And I think that it caused him to understand the harm that these children are going to suffer if they had to come back with cameras in the courtroom and, you know, 12 people seated over there watching them in a courtroom full of law enforcement and put them on that stand.

I think that those things -- those are some of the things that caused him to want to go ahead and try to resolve this in this fashion.

The other thing that I would say to the Court, Your Honor, is that having lived with this case now for over two years, just as the solicitors have, I've learned a great deal about what went on. And I would say to this Court that there are no innocent people in these indictments, based on what I've seen and heard. What I will say is that --

THE COURT: Yes, there are. There are two.

MR. WILSON SR.: Yes, sir. I apologize, I didn't

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mean it in that sense. I meant the people who were indicted is who I was speaking of. But what I'm saying is, Your Honor, is that in terms of culpability, all of those people who were indicted are culpable.

But when you look at what their participation was, you know, I think that Peter is probably one of the lesser of those people who are culpable. Not meaning that he didn't do anything wrong, that's not what I'm saying. What I'm saying is if ten is bad, you know, then he's not ten, he is something less than ten, whatever that might be. And obviously in my estimation, the most culpable people involved in this is the mother and father of these children and that they are the ones who allowed these other people to have access to their children.

Now, does that excuse their conduct? No, sir. And I am not suggesting that, I am in no way suggesting to this Court that these actions are okay or all right or should go unpunished. That is not what I'm saying. What I am saying to the Court is that when you look at Peter's role in this versus the role of the mother and the father and then this Anthony fellow, I think that Peter is at the lower end of the totem pole.

The last thing I would say, Your Honor, is that Peter is 58 years old. And a ten-year sentence is a

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life sentence for him because he's going to have to serve eight and a half percent of it. I'm not saying --

THE COURT: Well, I think we have discussed this.

MR. WILSON SR.: Yes, sir.

THE COURT: And we all agree that the sentence on each indictment is non-parolable.

MR. WILSON SR.: Yes, sir.

THE COURT: And the sentence on the sexual exploitation must be consecutive.

MR. WILSON SR.: Yes, sir.

THE COURT: Okay.

MR. WILSON SR.: Yes, sir.

THE COURT: All right.

MR. WILSON SR.: And that's my point. He's going to jail for a substantial period of time regardless, and he understands that. And what I'm trying to say is that I think that a life sentence -- and that's really kind of where we are here today, because he's going to have to serve that. Whatever the Court gives him, he's going to end up having to serve it.

And at 58 years of age, people don't live very long in prison. And he's going in at 58 and he gets 10, 15 years, he's going to die in prison in all possibility, in all probability. And so I just ask the

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Court, I know there's -- I mean, there is a minimum mandatory that we can't do anything about. I just ask the Court to be merciful and lenient under the circumstances understanding all of the facts and circumstances in this case.

THE COURT: All right, sir. Anything further, Mr. Wilson?

MR. WILSON SR.: No, sir, Your Honor. Thank you.

THE COURT: All right. Thank you for those comments. Anything further from the State?

MS. ANDREW: No, Your Honor.

THE COURT: All right. And we have a -- is there any contest to the fact that he has had a prior conviction --

MR. WILSON SR.: No, sir.

THE COURT: -- as required under the indictment for criminal sexual conduct in the first degree?

MS. ANDREW: Your Honor, I have a certified copy of his conviction, and I could enter it into evidence.

MR. WILSON SR.: There is no objection to that.

THE COURT: You want to introduce it just as a matter of course.

MS. ANDREW: I'll just introduce it as a matter of course. This is a certified copy we got from the Horry County Clerk of Court showing that he was convicted in

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2008 of a lewd act upon a child under the old law.

THE COURT: All right, very well. Thank you very much.

MS. ANDREW: Do you want me to hand it up?

THE COURT: No. You may just mark it as a Court's exhibit.

MS. ANDREW: Okay. Thank you.

THE COURT: All right, thank you.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

THE COURT: All right. Now, Mr. Spirakis, this is terrible conduct. I'm inclined to agree with Mr. Wilson in that the conduct of the parents in this matter exceeds your conduct. But that doesn't excuse your conduct.

Mr. Spirakis, I'm going to consider two things or three things; first of all, the seriousness of the offense. But I'm going to consider your age, and I'm going to consider the fact that these are non-parolable offenses which have a consecutive sentence on top of it.

Sentence of the Court as to the two offenses of criminal sexual conduct with a minor in the first degree, on each indictment the sentence of the Court is he be confined for a period of 17 years. As to

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engaging a child for sexual performance, on each count the sentence of the Court is 17 years.

As to the sexual exploitation of a minor in the first degree, the sentence of the Court is three years. The engaging a child for sexual performance offenses and the criminal sexual conduct with a minor in the first degree sentences are all concurrent. The sexual exploitation sentence is three years, and that is consecutive. Okay. Thank you very much.

MR. WILSON SR.: Thank you, Your Honor.

MS. ANDREW: Thank you, Your Honor.

(WHEREUPON, the hearing concluded at approximately 1:01 p.m.)

(End of Transcript of Record.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, TERESA J.F. BAUTZ, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina at the time of the foregoing proceeding, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 19th day of June, 2019.

I FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

S/Teresa J. F. Bautz

TERESA J.F. BAUTZ, RPR
Official Court Reporter

FORM 5 2019CP2602651

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)

Panteleimon N. Spiratis SCDC # 343051
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR POST-CONVICTION RELIEF

HORRY COUNTY
2019 MAY -2 PM 2:16
RENEE L. ELVIS
CLERK OF COURT
HORRY COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County CI
2. Name and location of Court which imposed sentence Horry County General Sessions
3. Name(s) of co-defendant(s) (if any) Lindsey Honeycutt, Ambrose Heavener Anthony Strickland.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2016-GS-26-04786, 04788, 04789, 04790, 04291
   (b) ____
   (c) ____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) Aug 21, 2018 30 years
   (b) ____

Revised 3/2003

(c) ____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty ____

(c) after a plea of nolo contendere ____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. ____

iii. ____

(b) the result in each such Court to which you appealed:

i. Affirm

ii. ____

iii. ____

(c) the date of each such result:

i. March 6, 2018

ii. ____

iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2018-001588

ii. ____

iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NA

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Council

(b) Judicial Error.

(c) ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failed to call witnesses to provide testimony in my behalf which caused me to plead guilty.

(b) The judge was told about a tainted jury pool and failed to allow a new jury selection.

(c) ____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? ND

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ND

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? ND

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. ____

iii. ____

iv. ____

(b) the name and location of the Court in which each was filed:

i. NA

ii. ____

iii. ____

iv. ____

(c) the disposition thereof:

i. NA

ii. ____

iii. ____

iv. ____

(d) the date of each such disposition:

i. NA

ii. ____

iii. ____

iv. ____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NA

ii. ____

iii. ____

iv. ____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NA

ii. ____

iii. ____

(b) the proceedings in which each ground was raised:

i. NA

ii. ____

iii. ____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Not available for direct appeal

(b) ____

(c) ____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? NA

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Ralph Wilson Sr. 1337 Third Ave Conway, SC 29526

ii. ____

iii. ____

(b) the proceedings at which each such attorney represented you:

i. NA

ii. 17C

iii. 17D

19. State clearly the relief you seek in filing this application:

Sentencing and conviction over turned; remanded for new trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Horry)
Panteleimon Spiratis

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Panteleimon Spiratis

SWORN to and subscribed before me this 29 day of April, 2019.

[illegible] (L.S.)
Notary Public

My Commission Expires: 3/3/2024

HORRY COUNTY
2019 MAY -2 PM 2:15
RENEE L. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Panteleimon N. Spirakis, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Panteleimon Spirakis
Applicant

SWORN or affirmed to and subscribed before me this 29 day of April, 2019.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2026

HORRY COUNTY
2019 MAY -2 PM 2:15
RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Panteleimon Spirakis, S.C.D.C. No. 188112,	)	Case No.: 2019-CP-26-02651
Applicant,	)	
v.	)	**RETURN AND PARTIAL MOTION TO DISMISS**
State of South Carolina,	)	
Respondent.	)	

FILED
2019 JUL 12 AM 8:50
RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Panteleimon Spirakis (Applicant) on May 2, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the October 2016 term of the Horry County Grand Jury for sexual exploitation of a minor in the first degree (2016-GS-26-4786) two counts of engaging a child for sexual performance (2016-GS-26-4788; 4789) and two counts of criminal sexual conduct with a minor in the first degree (2016-GS-26-4790; 4791). Ralph Wilson Senior, Esquire, represented Applicant. Mary Ellen Walter and Leigh Andrew, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On August 21, 2018, Applicant pled guilty to two counts of first degree criminal sexual conduct, first degree sexual exploitation of a minor, and two counts of engaging a child for sexual performance. The Honorable Judge Larry B. Hyman sentenced Applicant to imprisonment for consecutive terms totaling twenty years.

II. STATEMENT OF THE FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

On or between the dates of December 1, 2014 and April 30, 2015, while in the confines of Horry County, South Carolina, Applicant assaulted two twin children who were then between the ages of four and five years old. The victim's biological parents participated in the abuse and made them available to Applicant to assault in exchange for drugs and money. Applicant assaulted the female victim by penetrating her vagina and anus with objects and body parts. He assaulted the male victim by penetrating his anus with objects and body parts. The assault of both victims occurred at Applicant's house and at a dance club. The child victims were sometimes present while the other was being sexually assaulted, and the children were made to perform sex acts on each other and with other adults. Applicant also sometimes audio recorded the children and photographed them engaging in sexual acts.

(Tr. 209-10). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 210)

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. "Failed to call witnesses to provide testimony on my behalf which caused me to plead guilty."
2. Judicial Error
    a. "Judge was told about a tainted jury pool and failed to allow a new jury selection."

Applicant requests relief as follows:

- "Sentencing and conviction overturned, remand for new trial."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Plea Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286

S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v.

Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

Failure to Call Witness at Trial

Applicant contends Counsel failed to call a favorable witness at trial without substantive details. "[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*'" Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (citing Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998)) (emphasis added). When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8, 124 S. Ct. 1, 5, 157 L. Ed. 2d 1 (2003).

Here, Applicant has failed to give any details on the identity of the witness. Furthermore, Applicant has failed to give any details on the substance of this alleged favorable testimony. Therefore, Respondent submits Applicant cannot overcome the strong presumption Counsel did not call this witness for tactical reasons. Accordingly, Applicant's allegation Counsel was ineffective for failing to call a favorable witness is without merit.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Hill test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Namely, Applicant needs to specify which witness Counsel failed to call, explain how this specific testimony would have been favorable, and how the failure to call this witness impacted his decision to plead guilty on each charge.

Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. MOTION TO DISSMIS JUDICIAL ERROR CLAIM

Respondent requests that the claim of the trial court's "abuse of discretion" and "error of law" be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"Abuse of discretion, error of law" is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the allegation of the trial court's abuse of direction and error of law for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

IX. CONCLUSION

WHEREFORE, Respondent respectfully requests this Court grant the motion for a more definite statement, and thereafter convene an evidentiary hearing on the allegation of Ineffective

Assistance of Counsel. Additionally, Respondent respectfully requests this Court grant the partial motion to dismiss based upon on the allegation of Judicial Error.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JACOB ANDREW ISENBERG
Assistant Attorney General

By: Jacob A. Isenberg
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 10, 2019

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 2019-CP-26-02651
PANTELEIMON N. SPIRAKIS, #343051, Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	AFFIDAVIT OF SERVICE BY MAIL

FILED
2019 JUL 12 AM 8:50
RENEE C. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carla F. Grabert-Lowenstein, Esquire
Law Ofc. of Carla F. Grabert-Lowenstein, LLC
211 Laurel Street
Conway, South Carolina 29526

DATED this 10th of July, 2019.

Eva Cook, Legal Assistant
For Respondent

Pantelei'mon N. Spiratis #343051 239
Lee Correctional FC 1258
990 Wisacky Hwy
Bishopville, SC. 29010

Nov. 9, 2020

Renee N. Elvis
Horry County Clerk of Court.
P.O. Box 677
1301 2nd Ave
Conway, SC. 2952

FILED
HORRY COUNTY
2020 NOV 13 P 4:42
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2014A2618200450

RE: Motion to Compel

Dear ms. Elvis,

I am requesting for you to file a Motion to Compel with the court. On three seperate occasions I have requested Ralph Wilson Sr. to send me a complete copy of everything in my File. He has refused to cooperate. He says he is working on getting me a copy. This has been going on since my arrest on march of 2016. It seems to me five years is enough time. In the matter of Haddock 331 SE 2nd edition 601 (84). the Supreme Count of SC. Ruled that. "Clients file belongs to client and should be returned at clients request. Supreme Court Rules 32 code of professional conduct DR 6-101 7 (A)(3). Rules on professional procedure Section 7 (A)(3). Could you please schedule me a Court date in Front of a Circut Court Judge. I need for you to arrange transportation for me to appear. I will represent my self. Thank you in advance for handleing this matter

Sincerely,
Pantelei'mon N. Spiratis
Pantelei'mon N. Spiratis

Please serve:

Ralph J. Wilson Sr.
Attorney at Law Pa.
1303 Third Ave
P.O. Box 1807
Conway, SC. 29528

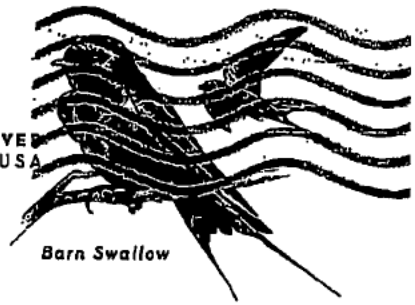
Phone (843) 381-0765
Fax 1-888-519-0545
Email: Info@rjwlawpa.com

FILED
HORRY COUNTY
2020 NOV 13 P 4:42
RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Please send a copy of the Motion is filed in the PCR file.

Pantcleimon N. Spivakis 343051 FB 1358
Lee Correctional
990 Wisacky Hwy.
Bishopville, SC. 29010

COLUMBIA SC. 290
9 NOV 2020 PM 2 FOREVER USA



Renee N. Elvis
Horry County Clerk of Court
P.O. Box 677
1301 2nd Avenue
Conway, SC. 29526

29526-520901

243

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS

LEE CORRECTIONAL INSTITUTE
SC DEPARTMENT OF CORRECTIONS

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244

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE
WARRANT(S) 2016A2610200471

INDICTMENT(S): 2016GS2604790

State of South Carolina

Panteleimon N. Spirakis
DEFENDANT(S)

This form order submitted by:	Attorney for : ☐ State ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE

☐ **DECISION BY THE COURT AFTER HEARING.** This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.

☐ **DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.

☑ MOTION: **MOTION TO COMPEL – DEFENDANT'S FILE**

☐ GRANTED ☐ DENIED ☐ CONTINUED ☐ WITHDRAWN

☐ WITHDRAWN BY MOVING PARTY: _____
Signature of Moving Party

☑ OTHER: DISMISSED WITHOUT PREJUDICE.

2021 APR 13 PM 3:10 FILED

IT IS ORDERED AND ADJUDGED: ☐ See Order of the Court below ☐ See attached order
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other: _____

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

Additional Information for the Clerk : _____

The above Motion for Defendant's File has been Dismissed without prejudice as this is a Common Pleas matter and must be resolved in the PCR file. 2019-CP-26-2651

Circuit Court Judge

129
Judge Code

4/13/21
Date

For Clerk of Court Office Use Only

This judgment was entered on the 13 day of **April, 2021** and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of **April, 2021** to attorneys of record or to parties (when appearing pro se) as follows:

P. Sprinkle # 343051 F61258
Lee Correctional Inst.
990 Wisacky Hwy, Bishopville SC 29010

ATTORNEY(S) FOR THE STATE

ATTORNEY(S) FOR THE DEFENDANT(S)

Renee Elvis

CLERK OF COURT

Court Reporter:

FILED
2021 APR 13 PM 3:19

STATE OF SOUTH CAROLINA COUNTY OF HORRY Panteleimon Spirakis S.C.D.C. No. 00343051 Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2019-CP-26-02651 CONSENT ORDER

FILED
HORRY COUNTY
2020 MAR 10 P 12: 11
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Ms. Carla Grabert-Lowenstein is appointed to represent Mr. Spirakis in his PCR case number 2019-CP-26-02651.

Mr. Ralph Wilson, Sr. was the trial attorney for Mr. Spirakis in the Horry County General Sessions case number 2016-GS-26-04786, 04788, 04789, 04790, 04791.

A portion of the evidence was a forensic interview of the alleged victim. The video of this interview was retained by Mr. Wilson, Sr., due to post plea issues raised by the Defendant/Applicant.

After an in-person interview with Mr. Sparakis, Ms. Grabert-Lowenstein, based upon her thirty-two (32) years' experience as an attorney (twenty-one (21) as a prosecutor and twelve (12) years' as a criminal defense attorney including representing on PCRs) believes viewing the forensic interview is critical to her representation of Mr. Sparakis in his PCR.

The undersigned parties agree that the video to Ms. Grabert-Lowenstein to view only. The parties further agree that the video will be returned to Mr. Wilson's safe keeping at the conclusion of the PCR. Mr. Ralph Wilson will have the discretion to destroy or return the video to the Children's Recovery Center.

I CONSENT:

Carla F. Grabert-Lowenstein
Attorney for Applicant

Ralph Wilson, Sr.
Trial Attorney for Applicant

IT IS THEREFORE ORDERED that the agreement set forth above is hereby approved and made Order of this Court, *pendente lite.*

AND IT IS SO ORDERED.

The Honorable [redacted]
Fifteenth Judicial Circuit

March 4, 2020
~~Conway~~, South Carolina
Georgetown,

State of South Carolina) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO. : 2019-CP-26-02651

PCR HEARING

June 25, 2021

BEFORE: The Honorable William H. Seals, Jr.

Panteleimon Spirakis,

Applicant,

vs.

State of South Carolina,

Respondent.

APPEARANCES:

Carla F. Grabert-Lowenstein
For the Applicant.

William H. Ray
For the Respondent.

Julie A. Kevish
Official Court Reporter

I-N-D-E-X

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Is your partner coming?

MR. RAY: Well, Your Honor, Mr. Spirakis' counsel and a witness, Ralph Wilson, Sr. is not here yet. She's trying to get him on the phone. I informed him that the hearing was today. We spoke to him on the phone. It was originally scheduled for yesterday and I did get a confirmed interaction that he was aware of the change and he'd be here today, so I'm not sure, it's unexpected, I think to both of us that he's not here at the moment.

THE COURT: We'll wait a few minutes and see if he'll show up.

MS. LOWENSTEIN: Your Honor, there is one preliminary thing that I would just like to put on the record, and I understand the Court's ruling earlier, but my client and I had talked about it, and I just want to put on the record that he objects to any reporter, especially tv coverage, and I've explained to him your ruling, but I just want to put that on the record, and Your Honor, if we wait a while and Mr. Wilson still doesn't show up then I will have a motion, just to let the Court know.

THE CLERK: I just got off the phone with Mr. Ralph Wilson's legal assistant, evidently he got this case confused with a case that was supposed to heard Wednesday and was continued and so he drove all the way to Georgetown. He's

getting here as soon as he can. I don't exactly know when that is, though, thank you.

THE COURT: Is he coming from Georgetown?

THE CLERK: That is my understanding, Your Honor.

THE COURT: That's what he said? Okay. How long will that take, 30 minutes?

THE ATTORNEY: Forty-five minutes to an hour.

THE CLERK: She said a few minutes, but that's, of course, very relative.

MS. LOWENSTEIN: Your Honor, if I may, my understanding, the AG's office notified him of the change, also that he confirmed he would be here today. What time was that? What time did he say he was going to be here?

MR. RAY: 2:30.

MS. LOWENSTEIN: Well, obviously there's probably something worse than cross-wired and I would object to waiting any longer. We all know what COVID has done to these cases and the Attorney General did what they needed to do to make sure Mr. Wilson was here, and obviously, I would make a motion to deny their Motion to Dismiss and to grant Mr. Spirakis the relief he's asking. I'll just wait for the Court's ruling but I feel like I have to make that motion at this time in the totality of the circumstances.

THE COURT: I'm willing to wait. We can wait on him and do it when he gets here. Do you want to just let me know

whenever he gets here and we'll take it from there.

MR. RAY: Thank you, Your Honor.

(Recess taken.)

THE COURT: If the State would like to introduce the case?

MR. RAY: Yes, Your Honor, may it please the Court. This is the matter of Panteleimon Spirakis versus the State of South Carolina, case number 2019-CP-26-02651. Mr. Spirakis is currently incarcerated in the Department of Corrections. He was indicted in October of 2016 by the Horry County Grand Jury for sexual exploitation of a minor in the first degree; two counts of engaging a child for sexual performance; and two counts of criminal sexual conduct with a minor in the first degree. He was represented by Mr. Ralph Wilson, Sr. who is here today and on August 21, 2018 Mr. Spirakis pled guilty to two counts of first degree criminal sexual conduct; first degree sexual exploitation of a minor; and two counts of engaging a child for a sexual performance. The Honorable Judge Larry B. Hyman sentenced the Applicant to imprisonment for consecutive terms totaling 20 years. He filed his application for Post-Conviction Relief on May 2, 2019 and with that, Your Honor, the State is prepared to proceed.

THE COURT: Yes, ma'am?

MS. LOWENSTEIN: Yes, Your Honor, we're ready to proceed. Mr. Ralph Wilson, Sr., please.

RALPH WILSON, SR. WAS DULY SWORN AT THIS TIME AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. LOWENSTEIN:

Q. State your name for the Court.

A. Ralph Wilson, W-i-l-s-o-n.

Q. Good afternoon, Mr. Wilson.

A. Good afternoon, how are you, ma'am?

Q. I'm good, how are you?

A. Pretty good, wore out, but I'm here.

Q. I understand that. Now, did you represent Mr. Spirakis from the beginning of this case?

A. Yes, ma'am.

Q. And there were other suspects?

A. Yes, ma'am, co-defendants, yes.

Q. And that included both parents of the minor children?

A. That is correct.

Q. And Mr. Strickland?

A. That is correct.

Q. Now, would it be accurate to say that this was a complex situation?

A. I mean, I don't know that it's complex. I mean, in the sense that it was a simple charge, basically this case came down to testimony from the children and the mother, that's what this came down to, so in that regard, no, it was not complex.

Q. Okay, but you've got other suspects?
A. Yes.
Q. And they were interviewed?
A. Yes. Well, interviewed by the State, you mean.
Q. Right.
A. Yes.
Q. Did you interview them separate?
A. No, I did not.
Q. So it comes down to mom and dad and -- the evidence -- excuse me, the evidence comes down to mom and the statements of the children.
A. That be a fair statement, I think, yes.
Q. And the children were twins, correct?
A. That's correct.
Q. A boy and a girl?
A. Yes.
Q. And how,old were they?
A. Young, I remember that, six, seven, maybe, as best I recall.
Q. Were they five at the time of the alleged incident?
A. They were younger at the time that the allegations occurred, allegedly occurred anyway, yes, so they could have been five, I wouldn't dispute that.
Q. And you are familiar with, for lack of a better phrase, the protocol that goes on before a young child is called to

testify they have to qualify?

A. Sure, yes.

Q. And they have to qualify as to knowing the difference between the truth and not the truth?

A. Sure.

Q. They have to qualify as to being able to relate what -- that they actually understand and can relate what they are testifying about?

A. I agree.

Q. How often does that happen with five year olds in your vast experience?

A. Not very -- I've had, I've actually had cases where kids were younger than that but it does happen. It is rare, I would agree with you that if the only testimony you have is from a five year old that you may have some difficulty if the five year old is not intelligent enough to say that he or she understands right from and a lot of times the judge will ask them what happens to you if you tell a lie, and they'll say you go to the bad place, or something like that, but in this case there was no question that these kids were qualified. You listen to the tape recordings from the recovery center, they give very detailed accounts of what they say occurred.

Q. Let's talk about that for a minute. Did they have a difficult time keeping focused?

A. Yeah, I mean, but that's not to be -- that's not

unexpected with a five or a six year old.

Q. But that is one of the issues with them being able to relate what they are alleging happened to them, correct?

A. Sure. Well, you say, one of the issues. One of the issues as to what?

Q. Well, just that if they can't focus on the questions how do you know that what you're getting is accurate?

A. Well, if we were going to trial, and I can only speak for myself and what I would have done, if we had gone to trial and the only testimony would have been the two children then these questions may very well be relevant questions that certainly things that you would want to look into, that's not the case here at all.

Q. And let's start discussing what you consider the other main testimony.

A. Okay.

Q. And that was that of the mother, Lindsey Honeycutt?

A. Yes.

Q. And would it be accurate to say that at the time she was interviewed by law enforcement and at the time of the alleged allegations this woman was not on her proper mental health meds and she was self medicating with street drugs?

A. She had been using drugs for years, that was not new, yes, that is correct. In fact, during the entire time that these incidents occurred she was using drugs, allegedly with

Peter.

Q. And my question to you is if you're saying she was the other lynch man, the lynch man of two five year olds and their testimony, isn't that a huge concern that she's using drugs and that affects, we all know about the credibility of addicts, did that concern you?

A. Well, listen, any time you have a trial you're concerned about any witness who takes the stand who has any testimony that might be relevant so for me to say that I wasn't concerned, that would be an understatement, however, did I believe that the issues surrounding her mental health and the issues surrounding her drug use, would that prevent her from testifying, no, that would not.

Q. You didn't believe that those issues affected her credibility, and just a yes or no on that question?

A. Could it, yes, if a jury believed that these things affected her credibility, yes, but that does not prevent her from testifying, that does not prevent her from testifying, the fact that she has poor credibility or may have poor credibility, and what I told Peter, and I don't deny this, I told him that if -- do you want me to answer?

Q. No, go ahead and just tell me what you told Peter about if she testified.

A. What I told him, because we had a long discussion about this for weeks, if not months, we had discussed what if she

testified because we knew that she was meeting with the Solicitor and that she was giving statements, and if I'm not mistaken she gave at least two or three different statements, the third statement being more devastating than the other two, and I explained to Peter that in my opinion as his lawyer that if he went to trial and if she testified and those kids testified to what they testified to during the trial recovery tape, that he was in all likelihood get convicted, I did tell him that.

Q. And did you discuss at all that the multiplicity of changed statements with Ms. Honeycutt could make her essentially incredible?

A. Are you asking me for my opinion or did I -- I'm not clear.

Q. Well, sir, you were faced with different statements from Ms. Honeycutt?

A. Yes, ma'am.

Q. And certainly you would know how to cross-examine her about those statements, correct?

A. Yes, ma'am.

Q. And did the prosecution indicate they were going to call the children to testify or not?

A. Yes, they were. They didn't want to and that was the thing, which is the only reason that we ended up getting what we got because they did not want to put those kids on the stand

and what they did tell us was that if they had to then they were going to ask for the maximum sentence for Peter.

Q. And did you discuss with the prosecution the problems with these children possibly qualifying?

A. Well, yeah, we had those conversations, but again, we never got to that point because we never had a trial.

Q. No, but was it not important for Mr. Spirakis to understood that the issues with Ms. Honeycutt and the issues with the children testifying, but you already said it's unusual for a five year old to qualify.

A. Yes.

Q. Did you discuss that in detail with Mr. Spirakis?

A. Yes. Let me explain that to you. What I explained to him is this, that if all the State had was those two kids then we had a fighting chance at trial, that was my belief from day one, but I also indicated to him that if it came down to it and if either of those parents changed their mind and they gave statements against him that there was no way we were going to win that trial.

Q. Well, and at this time Ms. Honeycutt was facing charges wasn't she?

A. Yes, ma'am.

Q. Would you describe that as having a motive to bury Mr. Spirakis, yes or no?

A. Well, I would say, probably, yeah, I mean, any person's

going to look out for their own interests, that's what they do, that's what all defendants or co-defendants do.

Q. So you were facing two problem testimony situations, Ms. Honeycutt and the children?

A. Arguably, yes.

Q. Did you see any difficulty with the way that the detective questioned somebody who was probably coming down or still using, was she leading, was she prompting, was she trying to shame her as the mother of these kids?

A. Probably to all of those things, yes, but those are not issues for me. Again, that may go very well to her credibility or her believability, you know, whether or not they suggested the answers to her and then she gave them, but she did make the statements.

Q. And I understand that difference but that's still an additional issue, correct?

A. No, it's not because, again, all these are issues that are for a jury to decide. No judge is going to throw the case out because she gave multiple statements. It happens every day. I mean, I've tried hundreds of cases where the defendants have given four different statements and still got convicted, so it doesn't -- that doesn't mean that.

Q. Now, you go through extensive discussion about identification and the fact that the children had never identified the individual by the name of Peter except by the

name of Peter, correct?

A. That's correct, as best I recall they named Peter but as far as I know, and I assume what you're asking me if I'm correct is whether or not law enforcement showed them a photo or something of Peter and tried to have them identify him?

Q. Yes, whether there was an actual line up at some point?

A. Not that I'm aware of, no, ma'am.

Q. So would I also be correct that of all the voluminous information in this case there was never a point where those children said this is Peter Spirakis and that they did not say anything definite that linked Peter to your client, and my client now?

A. Yes, they did. In fact, what they said is that Peter, that they actually say that they stayed at Peter's house which is how they knew him, according to him. Now, whether that's true or not true, I don't know, but I'm just telling you that's what they said. They also said that Peter was there when all of these incidents took place and they told the things that he allegedly was doing to them or with them while they were at the club.

Q. So they were saying that Peter had access to them?

A. Yes, ma'am.

Q. And were they living up in the North Carolina at the time?

A. Well, that's the other thing is that they lived there in

North Carolina for awhile. They were here with their mother for awhile, as well. I think from, I forgot what the months were, but there was like three or four months that they were here with their mother which is when they claimed that they were with Peter or stayed at Peter's house during that time frame.

Q. They were that specific?

A. I don't know if they said it was three or four months, no, I'm not saying that, but, yeah, they did say that they stayed at Peter's house and that they were with their mother, yes.

Q. Did you investigate things like school records, utility records, that could have shown that they weren't with their mother and staying with Mr. Spirakis?

A. Ms. Heavener, the grandmother of these children also gave a statement to DSS in North Carolina. What happened is North Carolina DSS and along with --

Q. Can I ask you another question?

A. Sure.

Q. You brought up the grandmother, and that was the father's mother, correct?

A. That's correct.

Q. And she was given custody of the children at some point by North Carolina?

A. Yes, ma'am.

Q. And did those charges go anywhere?
A. No, ma'am, not that I'm aware of.
Q. And did you investigate why they didn't go anywhere?
A. Yes, ma'am, got the DSS report, I got the entire report showing that it was unfounded. I did get that and I went through that, and that's where I was headed with this, the DSS and the child recovery people and the Horry County Police and Ms. Heavener all met, and it's all tape recorded, and discussed all of these things including Peter's alleged involvement in this.
Q. Did you have any concerns that grandmother once she got custody and without, you know, giving motive, may have planted some ideas in the kids, did you investigate that?
A. Well, I don't know how I would investigate that because I wouldn't be privy to any conversations that she may or may not have had with the kids while they were in custody. Now, if we had gone to trial certainly you're going to ask the kids, did you discuss this with your grandma, or whoever did you discuss this with, those are things that you would ask, but generally, we don't get access to the victims unless they want you to, and that's rare.
Q. Specifically, did you talk to the grandmother prior to the conversations and the day that Mr. Spirakis --
A. No, and the reason I didn't, because I had the audiotape, that's what I was just saying to you, I had the

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audiotape of how she felt about this and what her position was and it was not favorable to Peter in any way whatsoever.

Q. Now, we've already discussed that you have brought the motion for an ID and there was long conversation between you the prosecutor and the judge.

A. What conversation now? I'm sorry?

Q. Well, in doing the pretrial motions.

A. Okay. I take your word for that, I don't recall that specifically, but if you say the record says that I'm not denying it.

Q. You asked for a line up --

A. Okay.

Q. -- and I believe that's part of where there was a conversation where Judge Hyman said children that age, and was there ever a real definite red line drawn about whether or not you could bring up that there wasn't a line up, what was going to happen in that regard?

A. Well, I would assume that it would be like any other Jackson Hearing. If we had a hearing -- if we had had the trial, first of all, because there's no pretrial requirement that the defendants have made an out of court identification of a defendant, there's no requirement for that to have a trial. So, now, can you still ask for a hearing to make that determination as to whether or not they can identify the person? Sure you can, and we did that, and then it's up to the

judge whether he's going to permit you or not permit you to do it.

Q. And I think it's really nice for which ever is good for the prosecution or the defense to have that line up done, and that would have been, really, if it had come out where they couldn't identify Mr. Spirakis, that would have been good for the defense, would you agree with that?

A. Yeah, I mean, it certainly wouldn't hurt, I agree with that, yeah.

Q. But you sort of never got to that point before Mr. Spirakis decided to plea?

A. That's correct.

Q. Would it have been important for that kind of red line to be drawn so that Mr. Spirakis could know how the questioning or at least the anticipated questioning during the trial was going to go and what impact it would have on this case?

A. If you would rephrase that because I'm not clear on what you're asking me.

Q. I'm sorry. That's an important decision, whether or not there was going to be a line up or whether you were going to be able to ask whether there was one or wasn't and should that have gone into Mr. Spirakis' decision of whether to take a plea deal or go to trial?

A. Whether or not -- if I'm understanding you correctly, you're asking me would it be important for Peter to know

whether or not the kids could identify him at trial, is that what you're asking?

Q. Yeah, because isn't there sometimes a procedure where you do a pretrial motion that actually has, and in fact I remember our conversation about this, the defendant is excluded, and that you see if the witness can identify the person from a line up, and this would have been the children?

A. No. Because we convict people all the time of murder where there's no eyewitness to it to say I can identify the person, so, no, that would not have avoided a trial if that's what you're asking me. But even if it were true, even if the kids could not point him out and say that's him sitting right there, that would not mean that you couldn't have a trial. They said, we have Peter, the only question is, who is this Peter? Okay? You got all these people who know Peter, the mother, the father, the business associate, or whatever he was, they all knew Peter, and the children talked about being at Peter's house and where it was, so there were all these other things, I would say which are indicias of reliability which pointed to, this is the Peter, and that's why they went and arrested Peter was based on that information.

Q. And part of information came from drug addict, Lindsey Honeycutt, didn't it?

A. Yes, ma'am.

Q. So that's a huge credibility issue?

A. Yes, ma'am, but the thing here is what I'm missing is that we're talking about credibility, but all of those are jury trial issues. Those are issues you raise during the course of the trial and then the jury gets to decide whether they believe them or don't believe them, and if we had gone to trial a jury may very well have chosen to not believe anything that Lindsey Honeycutt had to say or that the children had to say if they couldn't identify him, but that was a risk that Peter had to be willing to take to go into that court, and what my position was and certainly what I told him was what I said to you earlier, what I told him was: If Lindsey Honeycutt got on that witness stand and she supported what those children said that jury in all likelihood based on my 43 years of experience were going the convict him.

Q. And when did you have that discussion?

A. Throughout, multiple times, multiple times, not just once, and I remember the morning of the trial, the morning that we were scheduled to have the trial we had that very same conversation that morning. We had it before then but we had it again that morning before we were supposed to go in and start the trial.

Q. Well, because jury selection had began?

A. Yes, ma'am.

Q. So and I understand that sometimes there's a middle state change, but you brought up, I mean, you already pinned it

down that it was Lindsey and the kids?

A. Yes. Peter wanted to go to trial, okay, let me cut through the chase for you if I can. He always wanted to go to trial, there's no question about that.

Q. Pretty hesitant, wasn't he?

A. Yes, ma'am. And had Lindsey had not agreed to testify and cooperate with the State he would have gone to trial. I have every reason to believe that because that is what he had said to me continuously. The game changer for him was Lyndsay's statements.

Q. Now, let me bring up something else, and that is, we are at the position of it was the children and Lindsey?

A. Yes, ma'am.

Q. Because there was no DNA, there was no other forensic evidence?

A. There was no forensic evidence, that's correct.

Q. And you brought a motion to quash the search warrant?

A. Yes.

Q. And that was because, frankly, it was defective because there were two parts of the building --

A. Yes.

Q. -- two different addresses --

A. Right.

Q. -- searched, and the search warrant didn't cover that?

A. No. But just so there's some explanation with that.

The search warrant, as best I recall, they didn't get anything that was any value, of any material value from the search warrant in the first place so there was nothing to suppress had the search warrant been valid.

Q. And that really is the point, isn't it? The children had talked about photos, had talked about cameras. The woman who was their counselor in North Carolina who law enforcement talked to --

A. Right.

Q. -- talked about where there's cameras. Now, am I correct, not a single camera, computer or, you know, a disc or, I know we're all old, VHS, corroborated anything that the children said?

A. As best I recall, that is correct, yes, ma'am.

Q. So we're still back to its Lindsey and the children?

A. Yes.

Q. Now, when the plea was finally taken, consecutive and concurrent are different, aren't they?

A. Very much so.

Q. And did you ascertain that Peter understood that difference and what he was going to be sentenced to?

A. What did he --

Q. Whether it was going to be consecutive and concurrent and the total amount of time?

A. No, we were not told what it was going to be. We were

told what he was going to plea to.

Q. In other words, the charges?

A. That's correct.

Q. So there was no agreement about what was going to be consecutive or concurrent?

A. I don't ever remember any conversation about consecutive or concurrent because if there was a conversation about consecutive or concurrent I would have put it in the record. I would have said to the judge that we're agreeing to a concurrent sentence on XY and Z, and if it's not in the record, no, it didn't happen.

Q. Now, because this thing is complicated. Was there a discussion about what percentage of time he was going to have to serve because of the particular charges he was pleading to?

A. My understanding for any sexual charge which are going to be considered violent, you're going to have to do 85 percent, that's always been my understanding. So, now, I'm not the Department of Corrections and I always caution defendants and I tell them, what the Department of Corrections does I can't tell them because I don't know, but I will try to give them the best information that I have available to me, but I would have thought that it would have been 85 percent.

Q. And would it surprise you that Mr. Spirakis once he got in the CDC that he was told he was doing day for day, which wouldn't be an 85 percent situation, would it?

A. No, that wouldn't be 85 percent if he's doing day for day, no.

Q. Okay. But that is so confusing and did you do, say, the extra mile to make sure that Mr. Spirakis who was facing serious charges and serious time really understood, you know, what consecutive/concurrent was going to be and what percentage he was probably getting to, because I certainly as a former prosecutor and now a defense attorney, I've been asked that question, so it's important, and certainly it was important to Mr. Spirakis, wasn't it?

A. Sure, but as I said to you earlier, I do not, I am not in the habit of telling defendants what they're going to do, how much time they're going to do, because I don't know. I don't know how much time they're going to do in any case, because what happens is when they get to the Department of Corrections the Department of Corrections decides how they are going to play out that sentence. We don't get to make that decision, not even the judge gets to make that decision. The Department of Corrections does that, and so, no, I can't tell you. You know, I can't tell you if you got convicted of shoplifting today how much of that time -- you got two years, I don't know how much of that time you're gonna do, I can't tell you that, I can't. Now, if there is a minimum mandatory sentence then you know, like, well, murder, you get 30 years, right? If you get a minimum mandatory 30 years then you assume

you got to do 30 years, that's what I got to do.

Q. And I understand that, but doesn't not making sure that at least the possibilities are discussed sort of leave the defendant just kind of hanging out there not knowing what kind of time they are pleading to?

A. No, because he would have known what his exposure was, yes. Now, if you're asking me do I recall specifically having a conversation saying, oh, the judge is going to give you a consecutive sentence, I do not recall having that conversation with him. Now, would I say to him, alright, this is what these charges carry and so obviously the judge can sentence you to anything within that range? Yes.

Q. And I understand that, but would you still agree with me that it's important for each individual defendant to understand the probabilities and the possibilities?

A. Yes, of course.

Q. Of what amount of time they're going to be doing?

A. Yes, to the best of my ability you do that, but again, you cannot tell a person how much time they are going to do because you're going to run into trouble every single time. Either you're going to be wrong on the short end or you're going to be wrong on the long end. There is no way that you can sit down with a defendant and say, alright, you're going to do three years, two days and 19 hours, it is impossible, so no.

Q. That's not what I'm suggesting.

A. So what I try to do is I try to tell them, this is what you're facing, I can't tell you. If you'd ask me to guess I'd say, yeah, you're probably going to do 85 percent, maybe you're gonna do 65 percent, maybe you're gonna do 50 whatever the other one is, but I don't know.

MS. LOWENSTEIN: I have no further questions at this time, Your Honor.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. RAY:

Q. Mr. Wilson, how are you?

A. I am pretty good, thank you.

Q. I am glad you could make it today.

A. It's been a long day today. I had court in Marion this morning but then I went to Georgetown by mistake thinking the hearing was over there, so now I'm here.

Q. Well, as long as we got you here. Just for the record, Mr. Spirakis goes by Pete, that's correct?

A. That is correct.

Q. Now, let me ask you, there were three other co-defendants in this case?

A. Yes.

Q. Including the two biological parents of the children?

A. Yes.

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Q. And then a third party who was unrelated to the children?

A. That is correct.

Q. And then Mr. Spirakis, as well, is he related to those children?

A. Not that I'm aware of, no.

Q. What was the relationship between Mr. Spirakis and Ms. Honeycutt?

A. Well, depending on who you ask. Peter just said he was nice to her and tried to help her out, that was his version. She says that she was having sex with Peter for money and that Peter was also providing her with drugs and using her to get to the children.

Q. Now, let me ask you: The evidence in this case against Mr. Spirakis consisted of almost entirely the victim's testimony and Ms. Hanika's testimony?

A. That is correct.

Q. Were you aware of any other State's witnesses who were going to provide substitutive testimony?

A. No. I'm sure they would have called, you know, the children's therapist or somebody like that, but they wouldn't know what really went on.

Q. And the children had given a video recorded statement?

A. They did.

Q. The Children's Recovery Center?

A. That is correct.
Q. And was it your understanding that that video was going to be admitted at trial?
A. Well, I know they always try to get it admitted, we always object, but -- and the child recovery person will come and they will testify, as well.
Q. So you would have tried to keep that video out?
A. Absolutely try.
Q. Now, let me ask you about your investigation here. Did you receive discovery in this case?
A. I did, yes.
Q. And did you review that discovery with Mr. Spirakis?
A. Yes, every bit of it. In fact, I gave Peter everything that I had way before so he could go over it, and I would go out to the jail because he would always have questions so I would go out to the jail to meet with him and go over stuff with him on multiple occasions.
Q. Did that discovery include statements made by his co-defendants?
A. Yes -- early on she kind of denied a lot of the stuff and that she didn't know anything about this and all this stuff was made up by the kids, and it wasn't until maybe a month or two before trial that she started to change her tune and relent.
Q. So is it safe to say that you would have attempted to

impeach Ms. Hanika's credibility at trial?

A. Yes, and we had some information which would impeach her to some degree. My thing was, to be honest with you, I didn't think that even with those things, her mental health, her drug use, she gets on the stand and admits that she had sex with her own children with pay from Peter, that the jury was going to be kind with that, not gonna happen, not in Horry County.

Q. And you told Mr. Spirakis?

A. Oh, yes, I did.

Q. So were you aware of any other information that Ms. Honeycutt might have about this crime?

A. Any other information, like?

Q. Just anything, any other co-defendants, any other information that might lead to --

A. It seems like there was another individual, I don't know if that person was ever charged. It seemed like there was another person in the wing somewhere who was supposed to have been involved, but these four that were arrested.

Q. Okay. Now, let me ask you about her mental health. Did you believe that despite her mental health issues, I mean, I think you've already answered this question, but the jury could find her testimony to be damning for Mr. Spirakis?

A. Yes.

Q. And you were well aware of the fact that she was a drug user and had mental health issues?

A. Absolutely. Absolutely. I had most of the medical records, I won't say all because you don't know when you have everything, but I had a number of her medical records including her last admission to the mental health facility.

Q. Did you obtain those through discovery?

A. Yes, through discovery.

Q. Now, let me just ask you generally your trial strategy had you gone to trial.

A. Well, the only thing we could do, one, Peter is -- I mean, counsel's right, we would have tried to attack the fact that the kids couldn't identify Peter, and that would have been one of the first thing that we would have tried to do at trial. The second thing that we would have tried to do, obviously, because you have to be really careful when you're cross-examining children in front of a jury because that can bite you real fast if the juries think that you're mistreating the children or you're being ugly to them, so you're walking on egg shells any time you're trying to cross-examine a six, seven, eight year old in front of a juror, especially if you've got mothers on there, fathers, too, for that matter, so that's a very difficult thing to do. The other thing that we certainly would have done is we would have been all over Lindsey, one, because she gave multiple statements and she emphatically denied that this all happened early on and later, you know, changed the story, and I think in part because, one,

she thought she was getting a deal, and two, she was trying to save herself and she was willing to throw Peter and really her husband, too, to the wolves.

Q. Okay. So these children, despite their young age, you believe that a jury would have bought their story?

A. I have no real doubt about that in my own mind.

Q. And do you think that they would have been able to identify Mr. Spirakis in court?

A. I do. Now, had we had the trial without Lindsey, I think that we could have made some smoke and had a shot. I don't know that it's a good shot, and I don't want to say 50/50, but I think we would have at least had a chance to argue, but which Lindsey agreed to testify and she gave that detailed statement corroborating the exact things that the kids had said, now, did she already know what the kids had said, of course she did, because she had a lawyer too and they got discovery just like I did, but she corroborated everything that they said down to the thing, and in fact told us some things that the children didn't know when she started talking about Peter wanting to put this the internet and charge people for it and that kind of stuff, so all that came out during her statement which did not come out beforehand, which we had no information about until she said it in her statement. And the fact that she's staying it against her own interest makes it more believable, to me anyway, and likely to a jury.

Q. Now, did you ever consider filing a written motion to have the victims identify Mr. Spirakis in court?

A. No, because, you know, what you would want to do is use that as a surprise. If you're going to try to do it, if you do it beforehand then who's to say that -- I mean, Peter's face had been in every newspaper around here, on television, everything else. It's easier, now, if I raise that motion all they're going to do, and I'm not saying that they would do anything underhanded, but you know, if you just show the kids a photo then they know who he is. If you wait until they are actually in court and if they don't know who Peter is then there's all these people in court then you can ask them if they know who Peter is and if so where is he, but there's no method that's fool proof.

Q. But you would say it was a strategic decision not to?

A. I definitely wouldn't do it pre-trial, no.

Q. Now, let me ask you, in these interviews, did you see any way to try and keep the challenge, the interview tapes or keep them out?

A. No. These things are done in every sexual assault case with minors since the statute was passed, and it's normal protocol, and I -- you know, I'm not a big fan of the Child Recovery Center because it's always against my clients, but I think they do a good job. They are very professional and they do a good job in the interviews and if you listen to these

interviews they never lead these children, ever. They don't lead them, they don't direct them in a certain area, they just kind of ask them open-ended questions and allow them to talk. Now, admittedly, children are children, so they'll play a little while and then they'll get their attention back and then they'll ask another question and then they'll talk some more. But I think that they did an admirable job when you're dealing with kids that age trying to get information from them.

Q. Now, did you discuss the potential sentence exposure that Mr. Spirakis was facing with him?

A. I'm sure I did.

Q. You did?

A. Absolutely.

Q. But to the best of your memory you didn't advise him on parole eligibility?

A. No, I would never do that because I don't ever know when it is, I just don't know when it is. I mean, a lot of times clients will try to pin you down and say, well, when do you think I'm going to get out, or how much time do you think I'm going to serve? And I will normally follow that and say, look, I don't really know, that's going to be really in the hands of the Department of Corrections because they figure things differently and almost every time I'm wrong, you know, when I tell somebody. I can specifically remember I had this one client who had a YOA sentence, and I told him he was going to

do 13 months, well, they let him out in nine. He came back to my office and he told me, you told me I had to serve 13 months and I only had to serve nine. Well, that's because they do it differently and you can't always know, you just don't.

Q. So, in any event do you think Mr. Spirakis pled guilty because he believed he was going to get 85 percent parole?

A. No. He plead guilty because Lindsey Honeycutt came in there and was going to testify against him and he knew if that jury found him guilty that the judge was going to give him the maximum sentence, and I have no doubt about that.

Q. Now, let me ask you: Was this just one incident of these children being abused?

A. No. There were multiple occasions they were taken up to this club and, you know, which is the amazing thing because these kids according to them, according to Lindsey at the beginning, had never been in this club: Oh, no, we've never been in the club, never been in the club. Well, the kids described a room in the club which exists in the club and then told about all of the things that happened to them multiple times at that location.

Q. Did they just come to be at this club?

A. No.

Q. I mean, were their parents customers?

A. Lindsey, I think, was working there, I assume that's what she was doing there, she was working there, and I think

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her husband was doing something around there. I think Peter was the door stop man or money collector or whatever for the door, they all had some role there, but what my understanding based on Lyndsay's testimony or her statements was that she brought the kids there and that the owner or the manager was okay with it, but then she brought them repeatedly. At first, though, again, she denied all of that at the beginning, and then in her final statement she admitted that's the way it was happening.

Q. And were there incidents that took place at Mr. Spirakis' home as far as you're aware?

A. I don't recall any specific instance of sexual activity that occurred at Peter's house, and its been four years, three years, however long its been, but I don't recall that.

Q. So did you think it would benefit your client if you got the children's school records to find where they lived?

A. No. Because Lindsey said that they were with her, that was her testimony, and Heavener said that they were with her during this time frame, which is how the police came up with the dates to charge Peter. That was based on Ms. Heavener's story that the children were here in Myrtle Beach with Lindsey, and Lyndsay's story was she was living part time or at least part of the time with Peter.

Q. And when you say Ms. Heavener, that is --

A. That is the mother of the co-defendant.

Q. Of Lindsey Honeycutt?
A. Of Lindsey Honeycutt.
Q. The children's biological grandmother?
A. Yes.
Q. So let me ask you about that. Were they living with the grandmother at the time that these incidents arose?
A. Off and on, yes, yes. No, when these incidents occurred they were living with Lindsey, the mother, here. Alright? Now, then they ended up going back to Ms. Heavener later.
Q. And then at the time of trial -- at the time of the allegations when the children first said that they were molested or abused where were they living?
A. They were home then. They were back with their grandmother.
Q. In North Carolina?
A. Yes.
Q. And you spoke with the grandmother?
A. No, I never spoke to her. I called her, she never returned my call.
Q. You attempted to speak with her?
A. I went back, yes, she never did call me back.
Q. Okay. Now, Mr. Spirakis wanted a trial from the beginning?
A. He did.
Q. And ultimately he decided to plead guilty when?

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A. When he decided was really the morning of trial when he knew that Lindsey was actually gonna show up, because his thinking was that Lindsey wasn't going to show up and that she wasn't going to do it. For whatever reason he believed that until the morning of the trial. When he saw Lindsey and knew that she was here that morning that's when things changed.

Q. Are you aware of any efforts that Mr. Spirakis made to prevent her from testifying?

A. I'm not, no.

Q. Was his bond revoked the morning of his plea?

A. Yes. That was because she told the Solicitor that he threatened her or something in the hallway, that he passed her in the hallway and said something threatening to her. Again, I'm not real sure if that were really true but it didn't matter, that's what the judge did.

Q. And that was when she showed up to testify?

A. Yes.

MR. RAY: The Court's indulgence for just one moment, Your Honor.

Q. Now, Mr. Wilson, I'll let you take a sip of water.

A. Thank you.

Q. The search warrant, was that for, what was being searched?

A. The search warrant was, the police went to -- Peter's business and his home are apparently a duplex of some type,

they went there. They had the wrong number. They wanted to go into one part of the unit but they had the wrong number. I think, I don't know if it was A and B, or whatever the numbers were, but anyway, they went to the wrong one. I don't think there's any question about that. The problem for me was there was nothing to suppress because there was nothing of any significant value which was going to hurt us in any way, so it was pointless.

Q. So was it the same building?

A. It's the same building, it's one unit, it's a duplex, it's one building, two different doors for entrances, one to his business and one to his home.

Q. And what were they looking for, do you know?

A. Yes. They were looking for pictures, they were looking for cameras, they were looking for anything I think that tied him to these sexual assault things, because if I remember Lindsey had told them that there was a video or something and they were looking for that, that might be in a safe or something.

Q. But nothing was found in a safe?

A. Nothing, nothing of any value, no.

Q. So you didn't think it would be worthwhile to quash a search warrant that turned up no evidence; is that correct?

A. I mean, no, strategically, what's the benefit?

Q. Now, ultimately, Mr. Wilson, whose decision was it here

to plead guilty?

A. Peter's.

Q. And do you believe that he did that knowingly and voluntarily?

A. Without any doubt, it was knowing, it was voluntary, it was intentional on his part, he made that decision, nobody forced him to make it. Now, did I tell him what my opinion was, absolutely, but I think I'd be remissed if I hadn't done that, but the decision was his, always was.

Q. Okay. And he made that decision after speaking with you --

A. Yes.

Q. -- about the strength of his potential defense?

A. Yes.

MR. RAY: No further questions, Your Honor.

MS. LOWENSTEIN: I have just a couple of follow-up questions.

REDIRECT EXAMINATION

BY MS. LOWENSTEIN:

Q. Sir, are you aware that Mr. Spirakis was subject to probation searches and some law enforcement went there periodically?

A. Yeah, yeah, I think I was.

Q. And did you ever check on whether they ever found the kids there?

A. No, because there was never any indication that they were there when the kids were there. In fact, he wasn't supposed to have the kids there, so obviously, if the probation had found them there then he would have gotten arrested a lot sooner.

Q. So they never found them there?

A. As far as I know, no.

Q. Now, you kind of, you said, look, there was nothing to suppress?

A. Right.

Q. But Lindsey had said that there were gonna be tapes, so isn't it important that law enforcement made a major mistake in the search warrant that could have been handed home, and just yes or no on that question?

A. Repeat the question because I'm --

Q. Well, you know, we defense attorneys are famous for wanting to latch onto any mistake --

A. Sure.

Q. -- and the mistake in the search warrant was pretty major, wouldn't you agree?

A. No, I don't think it was major because it's one building and both belong to Peter and whether it was a scrivener's error, I don't know the answer to that, my point, though, simply is, there is no value, there is no legal value in saying that -- when they don't have anything that they're going to try

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to use from it.

Q. Now, they were specifically going at least on part on Ms. Honeycutt and her saying: Well, there's gonna be a tape.

A. Okay.

Q. ,And none was found?

A. That's correct.

Q. Okay. And that's another chink, wouldn't you agree, in her credibility?

A. No, because her credibility is already, in my mind, suspect, but again, that's not an issue, that's for a jury. I mean, A jury will have to decide all of those things, and yes, would you raise that if an officer took the stand to testify about this case, would you ask him whether or not they found any tapes or anything that support what she said, absolutely you would do that, but --

Q. Well, and it's something that needs to go into any decision-making progress about whether an individual is going to testify, isn't it? I mean, sorry.

A. That's alright.

Q. The fact they didn't find anything, and we've already discussed where that information came from --

A. Right.

Q. -- in Mr. Spirakis making a decision to enter a plea, certainly should have taken that into consideration?

A. He knew that, if that's what you're asking me. Did he

know that? The answer is yes, he did know it, he knew that.

Q. Well, and did you discuss how you were going to deal with it if Ms. Honeycutt was on the stand?

A. I don't know that I had a specific conversation with him where I said, Peter, when Lindsey takes the stand I'm gonna ask the office if they went there if they found that, if they found a video that she talked about. Now, I would have asked her that when Lindsey testified, ain't no question I would have asked her didn't she tell the police that and is she aware that they didn't find anything, ask that and is she aware they didn't find anything, yes.

Q. And that wasn't discussed with Mr. Spirakis, was it?

A. That verbatim statement, no. Generally, did I discuss with him that I would do everything I could to impeach her credibility if she testified, the answer is, yes. Did I go through with him minutely every detail with every possible scenario and say, well, if this happens then I'm gonna do this, if that happens then I'm gonna do this? No, I did not do that, and I don't do that in general, but I do tell all of my clients, yes, I will attack her credibility because that's all we had against Lindsey was her credibility, we had nothing else because she said these things happened, there was no way to defend against them except to try to destroy her credibility.

MS. LOWENSTEIN: I have no further questions, Your Honor.

THE COURT: Anything further?

MR. RAY: Just briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. RAY:

Q. Mr. Wilson, do you know why Mr. Spirakis was on probation?

A. Yes, for a similar offense, and actually I represent --

MS. LOWENSTEIN: Objection, relevance.

MR. RAY: Your Honor, she asked him about probation searches, why was he on probation --

THE COURT: She opened the door, go ahead and ask the question.

A. Yeah, he was on probation for a similar kind of offense that I represented him on, actually, some years earlier, and he had been released and was on probation for that sexual offense.

Q. Okay. And then the only other question is this search warrant that you didn't challenge, did you believe that the state would have had probable cause to bring these charges even if you had challenged successfully that search warrant?

A. The search warrant was of no value because nothing was found so even if the judge had said, yes, I find that the search warrant is invalid and I'm throwing it out, it didn't change anything. It wouldn't have changed anything. It just made no sense to argue about it when there was nothing to -- and the other problem for us was, they could have always said

scrivener's error, you know, that it was a scrivener's error because the two apartments are right together, there's one door here, one door here, and somebody put down the wrong door instead of the other door. They had the number right for the street and everything else, it was just the wrong apartment, which are right next to each other. And as I said, if something had been found that I thought was detrimental to Peter, absolutely, I would have been jumping up and down about it trying to keep it out.

Q. So ultimately, probable cause was wholly independent of the search warrant?

A. Yes, absolutely.

MR. RAY: I have no further questions.

MS. LOWENSTEIN: I have no further questions, Your Honor.

THE COURT: You may step down.

THE WITNESS: May I leave, Your Honor?

THE COURT: Yes.

THE WITNESS: Thank you.

THE COURT: Enjoy your afternoon.

THE WITNESS: It's been a long Friday.

THE COURT: Call your next witness.

MS. LOWENSTEIN: I have one very short witness and that would be Honeycutt and she is in custody.

LINDSEY HONEYCUTT WAS DULY SWORN AT THIS TIME AND

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TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. LOWENSTEIN:

Q. State your name for the Court and spell your last name for the court reporter, please.

A. Lindsey Honeycutt, H-o-n-e-y-c-u-t-t.

Q. Good afternoon, Ms. Honeycutt.

A. Hi.

Q. You were a co-defendant in the case with Mr. Spirakis?

A. Correct.

Q. And the two alleged victims were your twins who were five years old at the time of the arrest?

A. Correct.

Q. And they were eight years old at the time of the plea?

A. Right.

Q. Now, when you were interviewed were you using drugs?

A. I was.

Q. And let me be more specific. Were you using drugs when you were interviewed by law enforcement?

A. I was.

Q. And were you off of your mental health medications?

A. Yes, ma'am.

Q. And what was the mental consequence of that?

A. I lied to the Court.

Q. Now, did I talk to you in 2019?

A. Yes, ma'am.
Q. And I spoke to you on the phone?
A. Uh-huh.
Q. And we have never met face to face until today?
A. Right.
Q. And did I go over what you had said previously and ask you, did I prepare an affidavit and then send it to you to determine if that was accurate and you had it notarized?
A. Yes, ma'am.
MS. LOWENSTEIN: Your Honor, if I could have this marked a as Applicant A --
THE COURT: Number 1, yes, ma'am.
(Applicant Exhibit No. 1 was marked for identification.)
Q. I am placing Exhibit A in front of you, Ms. Honeycutt. Now, at the time that we spoke how long had you been incarcerated?
A. Including county?
Q. No, no, no, at the time we talked about the affidavit.
A. I don't know, like, maybe a year.
Q. Okay. Any drug use during that year?
A. Yes.
Q. What kind?
A. I failed a drug test for Suboxone.
Q. I'm sorry?
A. Suboxone.

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Q. Okay. So you were on proper mental health medications, correct?

A. Yes.

Q. Any illegal drugs?

A. No.

Q. What was your state of mind at the time that you signed that affidavit?

A. I was on my correct meds.

Q. In general, did you say you had lied in your statements about Mr. Spirakis?

A. Yes, ma'am.

Q. And did you offer a reason why you did that?

A. Because I was promised mental health court.

Q. And you were concerned about your own sentence?

A. Yeah.

Q. There is also a comment where it speaks to an incident of running into Mr. Spirakis on the day he pled. Did he threaten you?

A. No.

Q. Why did you tell the Solicitor that he did?

A. Because I was on drugs at the time and I just didn't want to be around him.

Q. And is that affidavit truthful and an accurate affidavit that carries your original signature?

A. It is.

MS. LOWENSTEIN: Your Honor, I'd ask for admission of Petitioners A at this time, and counsel has the other original that I have.

THE COURT: Any objections?

MR. RAY: Your Honor, I do object to this for hearsay but given that Ms. Honeycutt is here, just for the record.

THE COURT: I'm going to overrule it. I'll allow it.

MS. LOWENSTEIN: I'm sorry?

THE COURT: I overruled his objection, she's here, it's her affidavit.

(Applicant's Exhibit 1 was admitted into evidence.)

MS. LOWENSTEIN: I have no further questions at this time Your Honor. Thank you.

THE COURT: Yes, sir?

CROSS-EXAMINATION

BY MR. RAY:

Q. So Ms. Honeycutt, you stated you lied to police investigators?

A. I did.

Q. And you stated that you lied to the Court when you said that Mr. Spirakis threatened to kill you?

A. Uh-huh.

Q. Did your daughter also lie when she confirmed that Mr. Spirakis threatened to kill y'all?

A. She did.

Q. She did? Did you tell her to lie?
A. Uh-huh.
Q. You stated that you're still using drugs?
A. No. I failed a drug test for Suboxone.
Q. When was that?
A. About six months ago.
Q. Six months ago? Have you been using drugs today?
A. No.
Q. Have you been using drugs recently?
A. No.
Q. Do you take medication?
A. I take psych meds.
Q. For your mental health?
A. Uh-huh.
Q. If you had shown up and testified at Mr. Spirakis' trial would you have told the truth?
A. I don't know.
Q. You don't know? Were you planning on testifying at his trial?
A. No.
Q. You were not?
A. (shakes head, no)
Q. Did you tell the Solicitor that you were?
A. I told him I would and they told me he was taking a plea.

Q. You told him you would, okay. Are you aware it's against the law to lie while you're under oath to the Court?

A. I am.

Q. You are? Have you ever told the truth to a Court before?

A. Yes.

Q. Just not in relation to this case?

A. No.

Q. And you stated that you were lying because you were promised mental health court?

A. Uh-huh.

Q. Did you get mental health court?

A. No.

Q. No?

MR. RAY: No further questions, Your Honor.

THE COURT: Anything further?

MS. LOWENSTEIN: No further questions, Your Honor.

THE COURT: You may step down. Thank you. You may call your next witness.

MS. LOWENSTEIN: Your Honor, we have no further witnesses.

THE COURT: The State?

MR. RAY: Well, Your Honor, at this time the State would move for a directive verdict as to allegation number eight regarding alleged prior bad acts, I don't believe Mr.

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Spirakis has introduced any evidence supporting that allegation, but beyond that, the State has no further witnesses.

MS. LOWENSTEIN: Your Honor, this was not a simple incident, it had many many tentacles, and it's our position that Mr. Wilson made assumptions about them, did not completely investigate the two tentacles that were there or discuss them with my client, and that was -- Mr. Wilson admitted the case rose and fell on Lindsey who has admitted that she was on drugs, you know, made numerous statements because of that, and that the tape of five-year-old children. Now, Mr. Spirakis was given the advice and I think it fell short, he was not completely advised about consecutive, concurrent, nor about what could be done to get out, you know, to damage the testimony of Ms. Honeycutt or the tape of two children that were five years old that Mr. Wilson said they don't usually qualify. So here's my client, a layperson, who is left with nothing else connecting him, the children were never found there, things that Ms. Honeycutt said should be found there were not found at his residence, they were back and forth, and you know, the mental state of my client was that I have to take this or I'm going to get worse, and without, I think, full, you know, counseling of what could be done with what Mr. Wilson admitted were the two main pillars of the case. I'm asking that his request for relief be granted, and with that I have no

further comment.

THE COURT: Would you like to comment on that, as well, or you're fine?

MR. RAY: Well, Your Honor, I think the entirety of this is largely, I mean, depending upon the testimony of Ms. Honeycutt and these two victims at trial, Mr. Wilson testified that we would argue very credibly that Mr. Spirakis wanted to go to trial up until the point where Ms. Honeycutt appeared to be willing to testify. We would assert that her testimony here today is not credible. Who knows what she would have said at trial but we would argue there is no deficiency regarding his investigation or his advice from Ms. Honeycutt's testimony or the advice to plead guilty. We would also assert that he had strategic decisions for advising his client the way that he did, specifically regarding the allegation that he should have filed a written motion to have the victims identified in court, and furthermore, that the issue with the search warrant was a strategic decision because it would have been a waste of time. Those are all reasonable strategies that he engaged in. He made numerous pretrial motions in order to keep parts of the video out or limit the testimony of the children or to restrict the identification of Mr. Spirakis by the children, but ultimately it came down to Mr. Spirakis' decision, he was well informed by counsel, and there's no evidence that has been presented and certainly no credible evidence that he would have

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proceeded to trial but for some error of his counsel, and therefore, we would request that the Court deny that allegation and their request for a relief.

THE COURT: Alright.

MS. LOWENSTEIN: Your Honor, my last comment is that the issue of the children's identification, Mr. Spirakis did not receive good counsel on that, nor was there really kind of a definitive ruling on what happened so he couldn't make a knowledgeable decision about reaching the guilty plea, and I'm just going to return one to the Court, and I have no further comment.

THE COURT: I'll study the file and look at the transcript, review everything, and I'll rule soon.

MR. RAY: Thank you, Your Honor.

THE COURT: Thank you. Have a good day.

CERTIFICATE

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

I, Julie A. Kevish, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas for Horry County, South Carolina, on the 25th of June, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 25, 2021

Julie A. Kevish

JULIE A. KEVISH
OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Panteleimon N. Spirakis, Applicant, vs. State of South Carolina, Respondent.	CASE NO.: 2019-CP-26-02651 AFFIDAVIT OF LINDSEY HONEYCUTT

COMES NOW the affiant, Lindsey Honeycutt, first being duly sworn, deposes and states as follows:

My name is Lindsey Honeycutt, and I am thirty-three (33) years old. I was charged in a case of criminal sexual conduct with Panteleimon Spirakis. I entered a plea to a lesser charge of assault and battery on June 26, 2019. The alleged victims are my children.

During the course of the investigation I made several statements against Mr. Spirakis. None of the statements were true. At the time I was not taking proper mental health medications and was self-medicating with illegal drugs. I was using Heroin, Cocaine, and Xanax that was not prescribed to me.

Mental Health was the issue. I was promised mental health court. I was also promised that I would not be sentenced to more time than other co-defendants, who were entering pleas. At the time of these discussions Mr. Spirakis and his case were not discussed as I understood he was taking his case to trial.

I was only thinking if I did not cooperate, I was facing ninety-nine (99) years. I was not thinking straight as I was not taking my mental health medications and had been using drugs to self-medicate. I was also lied to about that I would be given a shorter sentence than the other defendants and was given more.

I saw Mr. Spirakis in court. I told the Solicitor's Office he had threatened me. I was so out of it I do not remember the exact words I used but I know there was no threat. My statement to the Solicitor's Office was a lie. In telling the lies, I was thinking only of my own situation and the fact I had two older children (14 and 16) to worry about.

My statements implicating Mr. Spirakis were all lies. The minor alleged victims never lived with Mr. Spirakis and me. I am willing to write sign and notarized statement and testify to the fact the statements were lies.

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SIGNATURES ON THE NEXT PAGE



I understand under penalty of law that this is a true and correct statement that the affixed document is a statement of affirmation of **Lindsey Honeycutt**.

FURTHER THE AFFIANT SAITH NOT.

Lindsey Honeycutt

SWORN TO and subscribed before me
On this 20 day of March, 2020.

Notary Public for South Carolina
My Commission Expires: 2-13-2029

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Panteleimon Spirakis, SCDC No. 343051	)	Case No. 2019-CP-26-02651
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina	)	
Respondent.	)	

This matter comes before the Court by way of Applicant Panteleimon Spirakis's May 2, 2019, application for post-conviction relief. Respondent made its return and partial motion to dismiss on July 12, 2019. The Court convened an evidentiary hearing on June 25, 2021. Applicant was present at the hearing and represented by Attorney Carla F. Grabert-Lowenstein. Assistant Attorneys General William H. Ray and Chelsey F. Marto represented Respondent.

Applicant's plea counsel, Attorney Ralph J. Wilson, testified at the hearing. Applicant's codefendant, Lindsay Honeycutt, also testified. Applicant himself did not offer any testimony. The Court had before it Applicant's records from the South Carolina Department of Corrections, the current and amended application for post-conviction relief, transcripts from a pretrial hearing, transcripts from Applicant's and Honeycutt's plea hearings, and the records from the Horry County Clerk of Court regarding the subject convictions. This Court has reviewed the record and the pleadings, heard the testimony, observed the witnesses, and finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. Applicant was indicted for sexual exploitation of a minor in the first degree (2016-GS-26-4786), two counts of engaging a child for sexual performance (2016-GS-26-4788; -4789), and two counts of criminal

sexual conduct with a minor in the first degree (2016-GS-26-4790; -4791) by the Horry County Grand Jury at its October 2016 term. Applicant was represented by Attorney Ralph Wilson, Sr., and Assistant Solicitors Mary-Ellen Walter and Leigh Andrew, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On August 21, 2018, Applicant appeared before the Honorable Larry B. Hyman and entered a guilty plea, as indicted and without negotiation or recommendation, to two counts of first degree criminal sexual conduct, one count of first degree sexual exploitation of a minor, and two counts of engaging a child for sexual performance. Judge Hyman sentenced Applicant to imprisonment for consecutive terms totaling twenty years' imprisonment.

Applicant's plea counsel filed a notice of appeal on August 30, 2018, at Applicant's request and asserted that there were no apparent issues properly presented for appellate review. Applicant filed a *pro se* response on January 8, 2019 and asserted the following issues:

1. The jury pool was tainted.
   A. There was 24 hour a day coverage on newspaper, internet and TV. There were live internet feeds of all my court proceedings. Everyone had a preconceived opinion I was guilty with no evidence.
   B. There was an outbreak of violence towards me at the table during jury selection with my attorney. Jurors who were not chosen threatened me in front of my chosen jury as they left the courtroom. Judge Hyman was told immediately. By the time he called the bailiffs the men were gone. A change of venue and a new jury pool was requested. Both motions were denied.

2. Solicitor Crystal Leigh Andrew denied me access to my computer records and property. Information which could show that I was not around during the time in question. The other codefendant, Anthony Strickland, was allowed to get his property. The information was crucial in my defense.

3. Solicitor Crystal Leigh Andrew lied to my codefendant, Lindsay Honeycutt, saying she would get mental health court if she testified against me, Lindsay Honeycutt and her mother Lynn Sullivan both told me in person. Ms. Andrew used blackmail and extortion to get testimony. When Ms. Andrew was asked by Judge Hyman "if that was true, if mental health court was offered" Ms. Andrew replied, "No your honor she was just screened for it."

Lying in a court room. I reported Crystal Leigh Andrew to the South Carolina Bar, C Tex David. I filed numerous grievances and phone calls.

4. The corrupt Horry County Police fabricated the story against me by pressuring Lindsay Honeycutt. The HCPD knew she was addicted to pills, opiates, marijuana, and heroin. They pressured Lindsay to drop gang rape charges against Anthony Strickland who had the police on his pay roll at Chez Joey's strip club. By charging me they could manipulate any testimony out of Lindsay. Lindsay was released on bond. Presently she is back in J. Reuben Long Detention after she testified against me. Found in a car passed out [illegible] drugs.

5. Ineffective counsel. Ralph Wilson, Sr. did nothing to get testimony to clear my name. In the holding cell right after Lindsay Honeycutt pled out he said the following. "I met with Judge Hyman in chambers. I can not win with this jury. I have no one to testify for you. The only evidence they have is sworn testimony from Lindsay Honeycutt putting you at the scene with her. Judge Hyman said if you go to trial he will give you the maximum over 60 years if you lose. You will die in prison, you may get as little as 14 years. If you say I told you this I will deny it." He refused to go to trial. My brother attorney George Spirakis was in the holding cell with me. Ralph Wilson Sr. told me to plead out.

All I want is a fair trial with an unbiased judge. I was found guilty before I was tried. The jury was biased with a guilty verdict before we went to trial. I need access to my computer records. Time to question and subpoena witnesses. The Horry County Police needs to be investigated. Especially the detectives on my case. I have enclosed a letter to Allen Wilson SC State Attorney General with a brief story of my struggles. Please read it and this letter before you render a decision. Thank You.

The South Carolina Court of Appeals issued an order finding that Applicant had failed to provide a sufficient explanation as required by Rule 203 (d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR) and dismissed the appeal on March 6, 2019. The remittitur was sent on March 22, 2019. This application for post-conviction relief followed on May 2, 2019.

II. FACTUAL HISTORY

Between the dates of December 1, 2014 and April 30, 2015, Applicant sexually assaulted two twin four year old children. (Tr. 209, 9-13). The victims' biological parents, Lindsay Honeycutt and Ambrose Heavner, actively participated in the abuse and made the children

available to Applicant in exchange for drugs and money. (Tr. 209, 14-16). Applicant sexually penetrated the children, made them perform sex acts on each other, and other adults. (Tr. 209, 16-25). Applicant also filmed the abuse. (Tr. 209, 25 – Tr. 210, 2). The crimes took place at Chez Joey's, an Horry County strip club, and at Applicant's Horry County home. (Tr. 209, 20-22).

III. CURRENT APPLICATION

In his current application for post-conviction relief, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
   a. Failed to call witnesses to provide testimony on my behalf which caused me to plead guilty.
2. Judicial error
   a. The judge was told about a tainted jury pool and failed to allow a new jury selection.

At the evidentiary hearing Applicant proceeded forward with amended allegations that were served on Respondent, through counsel, on June 12, 2021, which alleged as follows:

1. Trial Counsel, Mr. Ralph Wilson, Sr., did not adequately investigate the statements of Ms. Lindsey Honeycutt, who was also charged as a Co-Defendant, to ascertain the validity and truthfulness of her statements. Multiple conflicting statements were made by Ms. Honeycutt that went without investigation. The Applicant was prejudiced by Mr. Wilson's lack of investigation given that Ms. Honeycutt's statements were a substantial portion of the reason the Applicant, Mr. Spirakis entered a plea of guilty. Had he known about the fact Ms. Honeycutt's statements went uninvestigated as to validity and truthfulness, he would have not entered his guilty plea.

2. Trial Counsel, Mr. Wilson did not adequately investigate the fact that there were additional suspects of which Ms. Honeycutt had material information. Investigation would have revealed possible affirmative defenses in the facts of other suspects If a proper investigation had been completed by Trial Counsel of these potential suspects and information attained thereof, Mr. Spirakis would not have entered his plea of guilty.

3. Trial Counsel, Mr. Wilson did not adequately investigate the impact of facts that Ms. Honeycutt was not on her proper mental health medication and was self-medicating with drugs not prescribed to her by a physician, and, the use

of illicit drugs. Mr. Spirakis was prejudiced as proper investigation would have revealed Ms. Honeycutt's statements were caused by her being under the influence of improper non-prescribed medications and use of illicit drugs.

4. The record shows there was no credible information found in the law enforcement investigation substantiating that the alleged minor victims could identify Mr. Spirakis as the perpetrator of the alleged molests on the minor victims. This is particularly significant as the victims were five year old twins. Trial counsel was derelict in not filing a written motion to have the victims identify Mr. Spirakis in court. At the very least the methods of probable cause which led Mr. Spirakis to be a suspect should have been questioned. His identify as the actual perpetrator of the alleged sexual assaults was not established. This critical motion which was not heard prior to entering the guilty plea. Mr. Spirakis was prejudiced by this motion not being heard since the minor victims likely could not identify Mr. Spirakis by the alleged victim as the perpetrator. It is unlikely that the State's case would have survived a motion to dismiss on this basis.

5. While Defendant's Counsel made a challenge to the interviews of the alleged victims and the methods used resulting in the allegations against Mr. Spirakis charged in this issue. There were additional specific, important reasons to challenge the interview tapes, as the minor children were not being able to testify. Specifically, Mr. Spirakis could not be identified as the perpetrator and the children could not give specifics of the alleged incidents. There were insufficient challenges by trial counsel. Mr. Wilson, to the trial judge's refusal to allow information from the tapes. The children were 5 year old twins. Judge Hyman's remark regarding "the memory of children that age," brought forth a serious question of credibility of the children due to their age. This may be found in the transcript of the hearing for ID motion. The Applicant believes examination and challenge of the tapes would have revealed the children displayed gaps in memory, became distracted by surroundings, drifted away from the interviewers questions and in general exhibited a substantial amount of inability to focus on the interview and the questions.

6. All these factors should have been presented and discussed within the discussion of admission of the children's interviews. This is a crucial point listed as an element of admissibility.

These statements become even more relevant in light of the fact that one of the solicitors assigned to this case stated during a motion hearing that the State was intending to have the children testify, and, was asking for admission of the taped interviews from the Children's Recovery Center.

Ms. Honeycutt was the only other alleged witness beyond the children's

tapes. By this critical factor not being challenged, Mr. Spirakis was prejudiced by the fact a challenge would likely have resulted in the tapes being determined as inadmissible. In light of Ms. Honeycutt's statements not being thoroughly challenged, and, the most important factor of the children's interviews not being challenge, Mr. Spirakis was prejudiced and felt forced into no choice but to plead guilty

7. Trial Counsel, Mr. Wilson, did not investigate the fact that the alleged victims in this case did not live at Applicant's residence. The children's school records, had they been obtained would have revealed their true residence. Other documents which should have been obtained were utility and rent records which would have evidenced Mr. Spirakis did not have access to the children at his residence or business.

Additional documents showing Mr. Sparikas did not have access to the children would have been documents from the Horry County Sheriffs Office of the visits made to the home of Mr. Spirakis as a condition of his being on probation. No children nor Ms. Honeycutt were found in the home of Mr. Spirakis

8 Whether or not the State intended to move to admit alleged prior bad acts contributed to the Petitioner's decision to enter a plea of guilty. Petitioner was without the full knowledge of the evidence which was going to potentially be used against him as it was not discussed with him by Trial Counsel. Such actions proved highly prejudicial as the Applicant could not and did not enter a fully informed guilty plea having been denied full knowledge of the evidence he was facing.

9 Furthermore, an appropriate and timely *Motion to Quash the Search Warrant* should have been heard. When the search warrant was executed two units were searched, #1: downstairs unit - 2811 [redacted] North Myrtle Beach, South Carolina and #2: upstairs unit - 2809 [redacted] North Myrtle Beach, South Carolina, while the warrant only included the address of #. Thus, the search of unit #2 was illegal and all evidence found therein should have been declared as Excluded. Thus, illegally obtained, (inadmissible) evidence improperly prejudiced Applicant, Spirakis' decision to plead guilty.

10 Trial counsel, Mr. Wilson, did not investigate whether or not the grandmother of the children, with whom the children were placed, had influence on the children's interviews. If it were found that the grandmother influenced the minor children's interviews, then Mr. Spirakis would not have entered his plea of guilty. This factor, too, materially prejudiced Mr. Spirakis.

11. If all the aforementioned factors cited above had been properly investigated, Applicant, Panteleimon Spirakis would not have entered his guilty plea. This is true even though the State represented they were not planning to proffer any of the evidence seized. Mr. Spirakis remained concerned about its potential admission, thus felt compelled over his free will to enter a plea of guilty.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. §17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

Applicant's allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e). SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*,

286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*. 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Investigate

Applicant raises five allegations that his plea counsel was ineffective for failing to investigate various aspects of his case. Namely, Applicant alleges that counsel failed to investigate the truthfulness of codefendant Honeycutt's statements, failed to investigate information Honeycutt had about additional suspects that would have revealed affirmative defenses at trial,

failed to investigate the impact of Honeycutt's mental health and drug abuse, failed to investigate the children's place of residence, and failed to investigate the influence that the children's grandmother had on their statements.

To establish counsel failed to adequately prepare for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998); *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Davis v. State*, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); *Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial); *Palacio v. State*, 333 S.C. 506, 511 S.E.2d 62 (1999) (Trial counsel not ineffective for failing to timely request discovery because contents of documents were not presented at PCR hearing). At a minimum counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). However, a PCR applicant claiming that their counsel failed to present favorable witness testimony must present that testimony at the PCR hearing in order to prove prejudice from counsel's omissions. *Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005).

Here, plea counsel testified that the evidence in this case largely consisted of the statements of the two minor victims, and that Applicant was prepared to proceed to trial until Honeycutt agreed to testify against him. He explained that Applicant's relationship with Honeycutt consisted

of him giving her drugs and money in exchange for access to the children. He stated that he believed her testimony would have likely led to a conviction at trial, and it was the catalyst that induced Applicant's guilty plea. He stated that he was aware of Honeycutt's mental health issues and drug abuse and would have attempted to impeach her credibility on those points had Applicant proceeded to trial. He also stated that he would have attempted to impeach her credibility for wavering and inconsistent statements that she had given to police, as well as her willingness to jeopardize the safety of her children. He stated that he would have attempted to impeach the children's testimony and identification of Applicant, but was weary of cross-examining the children too harshly and putting off the jury.

However, he stated that even if the jury found that she lacked credibility, her testimony would still have been brought out and would likely be very damaging to Applicant's chances at trial. Even though he would have challenged Honeycutt's credibility, Applicant chose to enter his guilty plea rather than risk going to trial and facing the maximum penalty. Plea counsel stated that Honeycutt's testimony would give Applicant no chance of winning, and that he had no doubt that he would have been convicted at trial.

Plea counsel stated that he may have called the children's therapist to testify had the case gone to trial. Otherwise, he was not aware of any other witness who could offer any defenses. He stated that he did not believe obtaining the children's school records would have helped with the defense. The evidence showed that the children were abused multiple times and that it may not have even occurred at Applicant's house. Honeycutt was expected to testify that the children were living with her at the time of the abuse and would have confirmed that Applicant had access to the children.

Plea counsel also testified that he attempted to contact the grandmother of the children but was unsuccessful. He indicated that she was uninterested in speaking with him because of the allegations against Applicant. She had previously given statements to the North Carolina Department of Social Services in relation to a separate investigation into allegations of abuse against the parents and Applicant. That investigation had not resulted in any charges, but he did not believe there was any way to investigate the notion that she had planted the story in the heads of the children, given that she would not communicate with him.

Honeycutt testified that she was on drugs at the time of Applicant's plea hearing and that she made up incriminating statements against him. She did so because she was told that she would be given mental health court if she cooperated against him. She stated that she lied when she testified that he threatened to kill her at his bond revocation hearing. On cross-examination she stated that her teenage daughter also lied, at her instruction, at the bond revocation hearing. She stated that she had recently tested positive for narcotics while in the Department of Corrections, and still takes psychiatric medication. She stated that she does not know if she would have told the truth at trial, but that she has never told the truth before in this specific case.

This Court finds that Applicant has failed to meet his burden of proving the allegations of ineffective assistance of counsel for failure to investigate. Honeycutt recanted her statement at the hearing, and admitted that she had lied to the court while under oath for reasons unknown to this Court. Therefore, this Court finds her testimony to lack credibility. Furthermore, plea counsel's credible testimony shows that he was well aware of precisely the facts that Applicant claims warranted further investigation. He attempted to contact the grandmother but she would not speak with him to assist in the defense, and he had no other method of casting doubt on the authenticity of the children's story. Finally, this Court finds that the evidence at trial would have shown that

Applicant had access to the children through his relationship with Honeycutt, whether it was at his home or at the strip club, and therefore further investigation into their address would have been pointless. As such, this Court finds no deficiency in counsel's investigation into the facts and evidence of this case.

Furthermore, Applicant has failed to prove that he was prejudiced by his counsel's performance. Regardless of Honeycutt's statements, Applicant could still have been found guilty based on the children's testimony alone. A jury could have found her completely incredible and nevertheless believed the children's story and identification. No amount of investigation into Honeycutt's credibility would have changed that. Applicant also has not presented testimony or evidence supporting the theory that the children's grandmother showing any influence on the children's statements. Applicant has failed to show that but for counsel's deficient investigation, he would have proceeded to trial. Instead, this Court finds that his decision to enter his guilty plea was freely, intelligently, and voluntarily made with the advice of competent counsel, and was made because he wanted to avoid trial and the risk of receiving the maximum sentence. Therefore, Applicant has failed to meet his burden of proof and these allegations must be denied.

Children's Identification

Applicant alleges that plea counsel was ineffective for failing to adequately challenge the children's identification of Applicant. Specifically, Applicant alleges that his counsel should have filed a written pretrial motion to have the children identify him, should have challenged the probable cause that arose from their statements, and should have specifically challenged the interview tapes on the grounds that the children "displayed gaps in memory, became distracted by surroundings, drifted away from the interviewers questions and in general exhibited a substantial amount of inability to focus on the interview and the questions."

Reliability of properly admitted eyewitness identification, like credibility of other parts of the prosecution's case, is a matter for the jury. *Foster v. California*, 394 U.S. 440 (1969). However, suggestive elements in identification procedures may so undermine the reliability of the eyewitness identification and implicate constitutional concerns. *Id.*; *Neil v. Biggers*, 409 U.S. 188 (1972).

Prior to trial plea counsel moved for an in-camera hearing to determine whether the minor victims could identify Applicant. (Tr. 78, 20 – Tr. 79, 3). He explained that the only reference to Applicant by the children in the interview tapes had been when they referred to someone named "Pete." (Tr. 79, 10-13). He requested a photograph lineup to determine who "Pete" was before the children be allowed to testify. (Tr. 79, 22 – Tr. 80, 8). The State pointed out that Applicant "looked markedly different" at the time of the prosecution than he did at the time of the crime, and it would likely be difficult for them to actually identify Applicant given their age. (Tr. 81, 4 – Tr. 2, 11). She explained that the State intended to have Honeycutt provide the identification at trial, and that the children would not be asked to identify him in court. (Tr. 82, 14-23). The Court agreed to allow Applicant to be absent from the courtroom if he requested an identification, but also noted that it would open the door to testimony about the extent to which children could accurately identify someone. (Tr. 85, 24 – 88, 5).

Plea counsel testified at the PCR hearing that the victims in this case were very young at the time of the crime. While it is rare for kids of such a young age to qualify to testify, he believed these two children were unquestionably qualified to testify at trial. He noted that there were some issues with their ability to keep focus, but that was to be expected with young children. Overall he believed they did a good job giving statements to the Children's Recovery Center, and did not see any adequate basis for challenging admission of the interview tapes, other than the narrow grounds presented in his pretrial motion. Had they gone to trial he explained that he would have targeted

their focus in an attempt to impeach their credibility. Furthermore, he stated that this strategy would have been very relevant if Applicant had proceeded to trial, but given that he decided to enter his plea because of Honeycutt's potential testimony would likely lead to a conviction, there was nothing he could do regarding the children's credibility.

He stated that he did not want to file a written pretrial motion to have the children identify Applicant in court because he did not want them to be notified of his intention to seek the identification, because it may allow the children to be coached. He believed having a spontaneous in-court identification would have been more authentic. He also explained that he had asked for a lineup, but that there was no requirement of one at trial. He believed that the children were aware of who Applicant was, and could identify him. Even if they could not, it would still have presented a risk at trial because the jury likely would have believed the rest of the children's story.

This Court finds that plea counsel fulfilled his duties to his client by challenging admission of the interview tapes on the basis that the interviewer asked leading questions. He did so even though he believed that the children were not improperly influenced by the questions they were asked. Furthermore, this Court finds that plea counsel was prepared to challenge the credibility of the children had Applicant taken the case to trial. Finally, plea counsel offered a specific strategic reason for not filing a written pretrial motion requesting that the children identify Applicant in court. He was concerned that doing so would effectively provide the children with notice that they would need to specifically identify Applicant, and believed that it would be more beneficial to have the identification be spontaneous. This Court finds that to be objectively reasonable under the circumstances given the children's age, the significance of their testimony, and the difference in Applicant's appearance at the time of the crimes and the time of trial. Therefore, Applicant has failed to meet the burden imposed upon him to prove that his counsel's performance was deficient.

As for prejudice, Applicant has failed to show that he would have proceeded to trial had his counsel done anything different regarding the children's potential testimony, and therefore has not met his burden. He was not motivated to enter his plea because he believed that counsel should have done more to challenge the admissibility or credibility of the children's statements against him. Instead, the record shows that he was prepared to proceed to trial specifically because he believed his counsel could successfully challenge the testimony of the children. Applicant's assertion that his counsel's performance regarding the testimony and credibility of the children somehow induced his plea is contrary to the evidence in the record and the testimony presented at the PCR hearing. Therefore, Applicant has failed to meet the burden imposed upon him because he has failed to prove he was prejudiced. These allegations must be denied.

Prior Bad Acts

Applicant alleges that he did not know that evidence of prior bad acts would be used against him at trial, because plea counsel did not discuss it with him.

Plea counsel raised the issue of prior bad acts in a pretrial hearing (Tr. 74, 24 – Tr. 75, 3). He stated that he understood that the State was going to offer Applicant's criminal history, even if Applicant did not take the stand. (Tr. 75, 1-3). The State explained that it was required to do so because it was an element of Applicant's criminal sexual conduct with a minor in the first degree charge. (Tr. 75, 6-23). That statute states as follows:

> A person is guilty of criminal sexual conduct with a minor in the first degree if the actor engages in sexual battery with a victim who is less than eleven years of age; or the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of . . . an offense listed in §23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to §23-3-430(D)."
>
> S.C. Code Ann. §16-3-655.

The Court ruled that the evidence must be admitted because there was no other way for the State to prove its case, since the prior bad acts themselves are an element of the offense. (Tr. 77, 8 – Tr. 78, 17).[1]

At the PCR hearing plea counsel testified that he discussed the charges with Applicant and reviewed every bit of discovery with him. He also explained that Applicant was on probation for a similar offense at the time the subject crime occurred, and he had actually represented Applicant on those prior charges. Applicant did not produce any evidence to support his assertion that he was unaware of evidence of these convictions being introduced. Instead, it is clear from the record that he was aware that this prior bad acts evidence would be introduced because it was discussed at length at a pretrial hearing. Therefore, Applicant has failed to meet his burden of proving his counsel's representation was deficient. Even if deficiency exists, Applicant has not shown prejudice because any misunderstanding about the prior bad acts evidence against him was cured by the Court's ruling in the pretrial hearing. Therefore, this allegation must be denied.

Search Warrant

Applicant alleges that his counsel provided ineffective assistance by failing to challenge a search warrant of his home. Specifically, Applicant alleges that police searched the wrong address, and that plea counsel should have challenged the probable cause giving rise to his prosecution. This allegation is without merit.

[1] Since Applicant's plea the Supreme Court of South Carolina has found that evidence of prior §23-3-430 convictions are admissible in prosecutions for criminal sexual conduct with a minor in the first degree, but the criminal defendant is entitled, upon a proper motion, to a bifurcated trial because of the risk of unfair prejudice created by introduction of such evidence. *State v. Cross*, 427 S.C. 465, 832 S.E.2d 281 (2019). Applicant has not alleged or introduced any evidence that his counsel was ineffective for failing to move for bifurcation, or that he entered his guilty plea because his charges were going to be tried together.

The remedy in a criminal case for unlawful searches and seizures in violation of the United States Constitution's Fourth Amendment is exclusion of the unlawfully obtained evidence at trial. *Mapp v. Ohio*, 367 U.S. 643 (1961). If no evidence is seized, there is no evidence to exclude. Additionally, minor inaccuracies on the face of a search warrant will not necessarily lead to exclusion of evidence. *See U.S. v. Leon*, 468 U.S. 897, 926 (1984) (suppression is appropriate only where officers could not have harbored an objectively reasonable belief in the existence of probable cause). It is patently reasonable for counsel to refrain from filing frivolous motions and unnecessarily delaying criminal proceedings. *See Strickland*, 466 U.S. at 688-89 (acknowledging that the American Bar Association's Standards for Criminal Justice serve as guidelines for reasonable trial strategy); *ABA Standards for Criminal Justice 4-1.9; 4-8.1.*

Plea counsel testified that he was aware of the issue with the search warrant, but did not believe it was worth challenging because the police did not find anything pursuant to the search. He described the location as a duplex style residence with two separate addresses inside one building, both of which belonged to Applicant. Police had a warrant for one, but actually searched both. Police were looking for videos, cameras, or other incriminating evidence, and specifically targeted a safe that was found within one of the units, but found nothing. Nothing was discovered during the search that would have been used against Applicant at trial. Plea counsel believed it would have been a waste of time to attempt to quash this search warrant because there was nothing to suppress and it simply would not have benefitted Applicant in any material way. Furthermore, he testified that he believed it may have just been as scrivener's error on the face of an otherwise valid warrant, so a motion to suppress or quash the warrant may have not even been successful. He stated that he would have challenged the warrant if he believed it would have helped Applicant.

This Court finds that Applicant has not met his burden of proving ineffective assistance of counsel for failing to challenge the search warrant in this case. Plea counsel's testimony shows that he made a strategic decision to not challenge the search warrant because doing so would have been a waste of time and would not have benefitted his client's interest. Plea counsel's decision was reasonable under the circumstances because the search did not produce any incriminating evidence to be used against Applicant at trial.

Applicant has failed to prove that he was prejudiced by the failure to challenge the warrant for largely the same reason. He would have gained no conceivable benefit from a quashed warrant that produced no evidence to suppress. There is also no evidence in the record indicating that his decision to enter a guilty plea was motivated by the search warrant issue. Therefore, Applicant has failed to meet his burden of proving ineffective assistance of counsel and the application shall be dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 31 **day of** July **, 2021.**

William H. Seals, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Marion, South Carolina

Mailed
8-11-2021

WITNESSES

King Hemingway Horry County Police Department

Kathy Thompson

ARREST WARRANT NUMBER

2016A2610200450
CDR: 0379 16-15-0395
DOA: 3/4/2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 20 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-26- 04786

The State of South Carolina

County of Horry

2016 OCT 21 PM 3:18

Martin D. Spratlin 16H01192

COURT OF GENERAL SESSIONS

DATE RECEIVED FROM GRAND JURY

OCTOBER, 2016 TERM

THE STATE

VS.

Panteleimon N Spirakis
W/ M
407 Queens Rd
Myrtle Beach, SC 29572-5412
DOB: [redacted]
SSN: [redacted]

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

324

STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF HORRY)

At a Court of General Sessions, convened on October 13, 2016, the Grand Jurors of Horry County present upon their oath:

SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

CDR: 0379 16-15-0395

That Panteleimon N. Spirakis did in Horry County on or around or between the dates of December 1, 2014 and April 30, 2015, knowing the character or content of the material or performance, use, employ, induce, coerce, encourage, or facilitate a minor, to wit: [redacted] DOB: [redacted] to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity, for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexual explicit nudity, all under circumstances in which a reasonable person would infer the purpose is sexual stimulation, in violation of Section 16-15-0395, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

King Hemingway Horry County Police Department

Lady Thompson

ARREST WARRANT NUMBER

2016A2610200457
CDR: 0399 16-03-0810
DOA: 3/4/2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 20 2016

VERDICT

Foreperson of Petit Jury
Date:

C

DOCKET NO. 2016-GS-26- 04788

The State of South Carolina

County of Horry

Martin D. Spratlin 16H01192

COURT OF GENERAL SESSIONS

OCTOBER, 2016 TERM

THE STATE

vs.

Panteleimon N Spirakis
/ M
407 Queens Rd
Myrtle Beach, SC 29572-5412
DOB: [redacted]
SSN [redacted]

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

ENGAGING CHILD FOR SEXUAL PERFORMANCE

Jimmy A. Richardson, II, Solicitor

FILED

2016 OCT 21 PM 3:18

CLERK OF COURT
DATE RECEIVED FROM GRAND JURY

ORIGINAL

326

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 13, 2016, the Grand Jurors of Horry County present upon their oath:

ENGAGING CHILD FOR SEXUAL PERFORMANCE

CDR: 0399 16-03-0810

That Panteleimon N Spirakis did in Horry County on or about or between the dates of December 1, 2014 and April 30, 2015, employ, authorize, or induce a child younger than eighteen years of age, to wit: [redacted] to engage in a sexual performance as defined by section 16-03-800, S.C. Code of Laws, in violation of Section 16-03-810, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

King Hemingway Horry County Police Department

Kathy Thompson

ARREST WARRANT NUMBER

2016A2610200470
CDR: 0399 16-03-0810
DOA: 3/4/2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 20 2016

VERDICT

Foreperson of Petit Jury
Date:

C

DOCKET NO. 2016-GS-26- 04789

The State of South Carolina

County of Horry

Martin D. Spratlin 16H01192

COURT OF GENERAL SESSIONS

OCTOBER, 2016 TERM

THE STATE

vs.

Panteleimon N Spirakis
/ M
407 Queens Rd
Myrtle Beach, SC 29572-5412
DOB: [redacted]
SSN: [redacted]

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

ENGAGING CHILD FOR SEXUAL PERFORMANCE

Jimmy A. Richardson, II, Solicitor

FILED

2016 OCT 21 PM 3:18

CLERK OF COURT

DATE RECEIVED FROM GRAND JURY

328

☐ ORIGINAL

STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF HORRY)

At a Court of General Sessions, convened on October 13, 2016, the Grand Jurors of Horry County present upon their oath:

ENGAGING CHILD FOR SEXUAL PERFORMANCE

CDR: 0399 16-03-0810

That Panteleimon N Spirakis did in Horry County on or about or between the dates of December 1, 2014 and April 30, 2015, employ, authorize, or induce a child younger than eighteen years of age, to wit: [redacted] to engage in a sexual performance as defined by section 16-03-800, S.C. Code of Laws, in violation of Section 16-03-810, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

King Hemingway Horry County Police Department

Kathy Thompson

ARREST WARRANT NUMBER

2016A2610200471

CDR: ~~0385~~ 16-03-0655(A)(~~1~~)

DOA: 3/4/2016

~~3022~~

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: OCT 20 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-26- 04790

The State of South Carolina

County of Horry

Martin D. Spratlin 16H01192

COURT OF GENERAL SESSIONS

OCTOBER, 2016 TERM

THE STATE

vs.

Panteleimon N Spirakis
W/ M
407 Queens Rd
Myrtle Beach, SC 29572-5412
DOB: [redacted]
SSN: [redacted]

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY
2016 OCT 21 PM 3:18
MELANIE [illegible]-WARD
CLERK OF COURT
DATE RECEIVED FROM
GRAND JURY

330

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 13, 2016, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

3022
CDR: ~~0385~~ 16-03-0655(A)(~~2~~)

That Panteleimon N Spirakis did in Horry County, State of South Carolina, on or about or between the dates of December 1, 2014 and April 30, 2015, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than sixteen years of age, to wit: Sister [redacted], whose date of birth is [redacted]2010, and the Defendant has been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(D), S.C. Code of Laws, 1976, all in violation of Section 16-3-655(A)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

King Hemingway Horry County Police Department

Kathy Thompson

ARREST WARRANT NUMBER

2016A2610200452
CDR: ~~0385~~ 16-03-0655(A)(~~3~~)
DOA: 3/4/2016

3022

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 20 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-26- 04791

The State of South Carolina

County of Horry

Martin D. Spratlin 16H01192

COURT OF GENERAL SESSIONS

OCTOBER, 2016 TERM

THE STATE

vs.

Panteleimon N Spirakis
W/ M
407 Queens Rd
Myrtle Beach, SC 29572-5412
DOB: [redacted]
SSN: [redacted]

ATTORNEY: Ralph J. Wilson, Sr.

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

FILED

2016 OCT 21 PM 3:18

CLERK OF COURT

DATE RECEIVED FROM GRAND JURY

☐ ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 13, 2016, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: ~~0385~~ 3022 16-03-0655(A)(~~2~~)

That Panteleimon N Spirakis did in Horry County, State of South Carolina, on or about or between the dates of December 1, 2014 and April 30, 2015, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than sixteen years of age, to wit: [redacted] whose date of birth is [redacted] and the Defendant has been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(D), S.C. Code of Laws, 1976, all in violation of Section 16-3-655(A)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
Panteleimon N Spirakis)
AKA:)
Race: Sex: M Age: 57)
DOB: [redacted] SS#: [redacted])
Address: 407 Queens Rd)
City,State,Zip: Myrtle Beach, SC 29572-5412)
DL#: [redacted] SID#: SC01605529)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2604786
A/W#: 2016A2610200450
Date of Offense: 12/1/2015
S.C. Code § : 16-15-0395(D)
CDR Code #: 0379

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Sexual exploitation of a minor, First degree (3-20 yrs consecutive to any sentence)
in violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: C. Leigh
Anderson, C. Leigh — SC Bar# — Defendant — Wilson, Sr., Ralph J. Attorney for Defendant — SC806176 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $_____; plus costs and assessments as applicable*: the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: (8-21-18) 16-GS-26-4789, 2016-GS-26-4791

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 2016-GS-26-4790
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 2016-GS-26-4788
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2943(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 09/21/2038
$ _____ paid to Public Defender Fund
Other: _____

☒ Appointed PD or appointed other counsel.
Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renee N. Ellis
Court Reporter: Teresa Cautz

Presiding Judge
Judge Code: 3152
Sentence Date: 8-21-18

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
Panteleimon N Spirakis)
AKA:)
Race: WHITE Sex: M Age: 57)
DOB: [redacted] SS# [redacted])
Address: 407 Queens Rd)
City,State,Zip: Myrtle Beach, SC 29572-5412)
DL#: [redacted] SID#: SC01605529)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2604788
A/W#: 2016A2610200457
Date of Offense: 12/1/2014
S.C. Code § : 16-03-0810, 0653(2)
CDR Code #: 0399

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Engaging a Child for Sexual Performance (not more than 20 years)
in violation of § 16-03-0810, 0653(2) of the S.C. Code of Laws, bearing CDR Code # 0399
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: C. Leigh Andrew, C. Leigh — 72898 SC Bar# — Panteleimon Spirakis Defendant — R. Wilson, Jr., Ralph J. Attorney for Defendant — SCB06176 SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐Deferred ☐Def. Waives Hearing ☐Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

_____ days/hours Public Service Employment

Payment Terms: _____
☐ Set by SCDPPPS _____

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 09/21/2038
$ _____ paid to Public Defender Fund
Other: _____

☒ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Kellie N. Elvis
Court Reporter: Teresa Bantz

Presiding Judge
Judge Code: 2152
Sentence Date: 8-2-18

FILED 2018 AUG 21 PM 3:30 CLERK OF COURT HORRY CO. S.C.

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
Panteleimon N Spirakis)
AKA:)
Race: WHITE Sex: M Age: 57)
DOB: [redacted] SS [redacted])
Address: 407 Queens Rd)
City,State,Zip: Myrtle Beach, SC 29572-5412)
DL#: [redacted] SID#: SC01605529)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2604789
A/W#: 2016A2610200470
Date of Offense: 12/1/2014
S.C. Code § : 16-03-0810, 0653(2)
CDR Code #: 0399

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Engaging a Child for Sexual Performance (not more than 20 years)
in violation of § 16-03-0810, 0653(2) of the S.C. Code of Laws, bearing CDR Code # 0399
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: C. Leigh Andrew, C. Leigh — 72898 SC Bar# — Panteleimon Spirakis Defendant — Wilson, Sr., Ralph J. Attorney for Defendant — SCB06176 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐**Deferred** ☐**Def. Waives Hearing** ☐**Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____

_____ days/hours Public Service Employment

Payment Terms: _____
☐ Set by SCDPPPS _____

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 04/21/2038
$ _____ paid to Public Defender Fund
Other: _____

☒ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renee N. Elvis
Court Reporter: Teresa Bowers

Presiding Judge
Judge Code: 215
Sentence Date: 8-21-18

FILED HORRY COUNTY 2018 AUG 21 PM 3:30 CLERK OF COURT

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
Panteleimon N Spirakis)
AKA:)
Race: WHITE Sex: M Age: 57)
DOB: [redacted] SS#: [redacted])
Address: 407 Queens Rd)
City,State,Zip: Myrtle Beach, SC 29572-5412)
DL#: [redacted] SID#: SC01605529)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2604790
A/W#: 2016A2610200471
Date of Offense: 12/1/2014
S.C. Code § : 16-03-0655(A)(1)
CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Criminal Sexual Conduct w/ Minor 1st Degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # ~~0385~~ 3022
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: C. Leigh Andrew, C. Leigh — 72898 SC Bar# — Panteleimon N Spirakis Defendant — Ralph J. Wilson, Sr. Attorney for Defendant — SCB06176 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Deferred ☐Def. Waives Hearing ☐Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E begining _____

Recipient: _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 09/21/2018

$ _____ paid to Public Defender Fund

Other: _____

FILED
CLERK OF COURT
HORRY COUNTY, SC
2018 AUG 21 PM 3:30

X Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renee N Edwards
Court Reporter: Teresa Bantz

Presiding Judge
Judge Code: 252
Sentence Date: 8-21-18

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
Panteleimon N Spirakis)
AKA:)
Race: WHITE Sex: M Age: 57)
DOB: [redacted] SS#: [redacted])
Address: 407 Queens Rd)
City,State,Zip: Myrtle Beach, SC 29572-5412)
DL#: [redacted] SID#: SC01605529)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2604791
A/W#: 2016A2610200452
Date of Offense: 12/1/2014
S.C. Code § : 16-03-0655(A)(1)
CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Criminal Sexual Conduct w/ Minor 1st Degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # ~~0385~~ 3092
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: C. Leigh — Andrew C. Leigh — 72898 SC Bar# — Defendant — Wilson, Sr., Ralph J. Attorney for Defendant — SCB06176 SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Deferred ☐Def. Waives Hearing ☐Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 09/21/2038
$ _____ paid to Public Defender Fund
Other: _____

FILED IN THE COURT OF CLERK'S OFFICE HORRY COUNTY, SC 2018 AUG 1 PM 3:30

☒ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renee N. Edens
Court Reporter: Teresa Bantz

Presiding Judge
Judge Code: 252
Sentence Date: 8-21-18